

OVERSIGHT OF THE FBI

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JUNE 20 AND JULY 18, 2001

Serial No. J-107-27

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

79-609 DTP

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

EDWARD M. KENNEDY, Massachusetts	ORRIN G. HATCH, Utah
JOSEPH R. BIDEN, Jr., Delaware	STROM THURMOND, South Carolina
HERBERT KOHL, Wisconsin	CHARLES E. GRASSLEY, Iowa
DIANNE FEINSTEIN, California	ARLEN SPECTER, Pennsylvania
RUSSELL D. FEINGOLD, Wisconsin	JON KYL, Arizona
CHARLES E. SCHUMER, New York	MIKE DEWINE, Ohio
RICHARD J. DURBIN, Illinois	JEFF SESSIONS, Alabama
MARIA CANTWELL, Washington	SAM BROWNBACK, Kansas
JOHN EDWARDS, North Carolina	MITCH McCONNELL, Kentucky

BRUCE A. COHEN, *Majority Chief Counsel and Staff Director*

SHARON PROST, *Minority Chief Counsel*

MAKAN DELRAHIM, *Minority Staff Director*

CONTENTS

WEDNESDAY, JUNE 20, 2001

STATEMENTS OF COMMITTEE MEMBERS

	Page
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois	16
Feingold, Hon. Russell D., a U.S. Senator from the State of Wisconsin	13
Feinstein, Hon. Dianne, a U.S. Senator from the State of California	8
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa	10
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	6
Kohl, Hon. Herbert, a U.S. Senator from the State of Wisconsin	18
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	1
McConnell, Hon. Mitch, a U.S. Senator from the State of Kentucky	60
Schumer, Hon. Charles E., a U.S. Senator from the State of New York	15

WITNESSES

Bromwich, Michael R., former Inspector General, Department of Justice, Washington, D.C.	29
Danforth, John C., former United States Senator from the State of Missouri, St. Louis, Missouri	19
Fine, Glenn A., Inspector General, Department of Justice, Washington, D.C. ..	23
Rabkin, Norman J., Managing Director, Tax Administration and Justice Issues, General Accounting Office, Washington, D.C.	39
Webster, William, Senior Partner, Milbank, Tweed, Hadley and McCoy, LLP, Washington, D.C.	25

WEDNESDAY, JULY 18, 2001

STATEMENTS OF COMMITTEE MEMBERS

Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa	93
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	99
Kohl, Hon. Herbert, a U.S. Senator from the State of Wisconsin	156
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	63

WITNESSES

Dies, Bob E., Assistant Director, Information Resources Division, Federal Bureau of Investigation, Washington, D.C.	77
Kelly, Raymond W., Senior Managing Director, Bear Stearns, New York, New York and former Commissioner, U.S. Customs Service	72
Kiernan, Patrick J., Supervisory Senior Resident Agent, Federal Bureau of Investigation, Washington, D.C.	133
Perry, Frank L., Supervisory Senior Resident Agent, Federal Bureau of Inves- tigation, Washington, D.C.	128
Roberts, John E., Unit Chief, Office of Professional Responsibility, Federal Bureau of Investigation, Washington, D.C.	114
Senser, Kenneth H., Acting Deputy Assistant Director, Security Programs and Countermeasures, Federal Bureau of Investigation, Washington, D.C. ..	83
Werner, John, Blue Sky Enterprises of North Carolina, Inc., Cary, North Carolina	121

IV

QUESTIONS AND ANSWERS

	Page
Questions from Senators Leahy and McConnell for Senator Danforth	144
Questions from Senator Leahy for Norman Rabkin	145
Responses of John C. Danforth to questions submitted by Senators Leahy and McConnell	146
Responses of Norman J. Rabkin to questions submitted by Senator Leahy	148
Responses of William H. Webster to questions submitted by Senator Leahy	149

SUBMISSIONS FOR THE RECORD

Ashcroft, Hon. John, Attorney General of the United States, memorandum, June 20, 2001	152
Federal Bureau of Investigation:	
John E. Collingwood, Assistant Director, Office of Public and Congres- sional Affairs, letter, June 20, 2001	153
Louis J. Freeh, Director, memorandum, August 15, 2000	154
Hatch, Hon. Orrin G., Major Accomplishments of FBI Director Louis J. Freeh, 1993–2001, summary	160
Walker, Samuel, Department of Criminal Justice, University of Nebraska at Omaha, Omaha, Nebraska, statement	156

OVERSIGHT: RESTORING CONFIDENCE IN THE FBI

WEDNESDAY, JUNE 20, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 1:05 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Feingold, Schumer, Durbin, Hatch, Grassley, and Sessions.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good afternoon. The Judiciary Committee will begin oversight hearings on the Federal Bureau of Investigation today. Oversight of the Department of Justice, of which the FBI is a part, is among this Committee's most important responsibilities, and there has never been a greater need for constructive oversight of the Bureau.

The FBI has long been considered a crown jewel of law enforcement agencies. Unfortunately, today it has lost a lot of its earlier luster. Unfortunately, the image of the FBI in the minds of too many Americans is that this agency has become unmanageable, unaccountable and unreliable. Its much-vaunted independence has been transformed for some into an image of insular arrogance.

I think this is unfortunate because of the extremely dedicated men and women in the Bureau, many who do work at the finest possible level. But we now have an historic window of opportunity to examine the present state of the FBI and help guide constructive reforms to make the Bureau more effective, better managed and more accountable.

The current FBI director has announced his resignation. No successor has yet been named, and so this is a particularly appropriate time for us to take stock and think about how we should plan for the FBI in the 21st century, and also what guidance this Committee might give to the new director, whoever he or she may be.

I would hope that these hearings will help the members of this Committee prepare for the new director's confirmation hearings. We had invited Director Freeh here today to thank him for his public service and to hear from him what his advice would be to his successor. I thought it would be appropriate to begin these hearings by acknowledging all the positive contributions he has made

during his last 8 years. I also wanted to get his assessment of the problems that remain. When I spoke to him last week, he explained that he would not be able to attend.

In recent years, we have seen case after case where the FBI has fallen short, and sometimes far short of the high standards of professionalism and integrity that we expect of our Nation's premier law enforcement agency.

Last month, a veteran FBI agent was indicted for allegedly selling some of this country's most sensitive classified information to the Russians. According to the indictment, it is claimed spying went on for more than 15 years before the FBI detected the source of major security breaches and intelligence losses, despite numerous red flags that pointed to him. We learned from press reports today that just last week a support employee of the FBI in Las Vegas was arrested for allegedly selling sensitive investigative material to organized crime for over a year.

In the Oklahoma City bombing case, the FBI revealed only a few days before the defendant was scheduled to be executed that it had violated its discovery obligations by failing to turn over thousands of pages of documents to the defense. While the trial judge later ruled that this violation did not undermine the defendant's conviction or death sentence, the trial judge noted that it was up to others to hold the FBI accountable for its conduct.

Whatever questions the belated document production raised about the efficacy of the FBI, the trial judge concluded that the integrity of the adjudicative processes leading to the verdict and death penalty were sound. The judge said, "There is a great deal of difference between an undisciplined organization and an organization that is not adequately controlled that can't keep track of its information. Those are not the questions here. We are not here for the purpose of trying the FBI."

But the Oklahoma City bombing case is only the most recent one in which the FBI has violated its disclosure obligations. In 1995, a Subcommittee of the Judiciary Committee, under the leadership of Senators Specter and Kohl, held hearings on the tragic events at Ruby Ridge. The Subcommittee report, in which I joined, found that the FBI had willfully and repeatedly failed to abide by discovery rules and had irreparably damaged the Government's presentation of evidence at the criminal trial, causing a Federal judge to impose contempt sanctions.

We have also seen cases such as those of Wen Ho Lee, Richard Jewell and Tom Stewart, in which the FBI improperly leaked information about an ongoing criminal investigation. More than that, these premature leaks about suspected criminals may focus attention on the wrong persons and allow the real culprits to escape detection. We saw this after the Centennial Olympic Park bombing in July 1996, during the Summer Olympic Games. The FBI was making it very clear to the country that they had the right person, had him under surveillance, and so and so forth, and then finally acknowledged a series of mistakes. They had the wrong person. By then, the person they eventually charged had fled the area.

Tom Stewart was paid \$6 million in damages last year as a result of the FBI wrongfully releasing damaging information that he

was a criminal suspect. Wen Ho Lee's suit is still pending. Of course, we know the amounts of money paid following Ruby Ridge.

Serious questions have been raised about the FBI's use of informants. There have been cases in which FBI agents have allegedly leaked confidential law enforcement information to criminal informants, and then the informants use that as a way to flee.

In a case in Boston, I think one of the most egregious matters, the FBI allegedly allowed two innocent men to spend decades in prison for a murder that the FBI knew had been committed by one of its informants. In a case in New York, an FBI agent allegedly leaked information in a Mafia case about the imminent arrest of a confidential informant's son, who then fled.

Everybody on this Committee knows the tremendous things that the FBI has done to protect and preserve the people of this country and to uphold our laws. But when we see these kinds of failures and mistakes, it is no wonder that public confidence has weakened in the FBI.

According to a recent Gallup poll, only 38 percent of Americans have a great deal or quite a lot of confidence in the FBI. Twenty-three percent of those polled had very little or no confidence in the FBI. Confidence in State and local police is substantially higher, with about 60 percent of Americans having a great deal or a lot of confidence.

An erosion of public trust threatens the FBI's ability to perform its mission. Think of the effect it will have on judges and juries and people who must rely on the FBI. Think of what happens when FBI agents perform forensic and other critical work for law enforcement and we cannot trust them.

We have allocated to the FBI millions, even billions of dollars in increased funding because we wanted to have it become one of the world's leading crime-fighting agencies. Simply throwing money is not enough; we must do the oversight necessary.

We are not here to find ways to tear down the FBI, but to find ways to restore confidence in it. There are many irresponsible critics of the FBI who promote their conspiracy theories on Internet web sites and in the popular media. Fortunately, the great majority of American citizens have too much sense to believe in this.

The FBI is a national asset, and we should help it function effectively. We should not overlook the brave men and women, many of whom put their lives on the line for us all the time, from the FBI. We often forget the far greater number of cases where the FBI does its job quietly, professionally and without public fanfare, as we focus on those where they don't. Any constructive criticism of the FBI as an institution is not meant in any way to disparage its agents' sacrifices on our country's behalf.

Our efforts must be, and I am confident will be bipartisan. During the past several weeks, Senators on both sides of the aisle have expressed their concern about the present state of the FBI. They have talked about various legislative proposals to address the problems they have identified, both Republicans and Democrats have. So it is not an issue of either political party; it is an issue of the future security of our country.

We have to ask ourselves, who polices the FBI? Our focus is the mechanisms that currently exist for overseeing the activities of the FBI, and we should identify any gaps there.

We have an outstanding panel here today. Most are known to each member of this Committee. They all have familiarity and expertise with different aspects of the oversight process, and we will hear from them because our goal is to restore the luster, the effectiveness and the professionalism of this law enforcement agency and make it a crown jewel of not only our law enforcement agencies but those throughout the world.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Today, the Judiciary Committee begins oversight hearings on the Federal Bureau of Investigation. Oversight of the Department of Justice, of which the FBI is a part, is among this Committee's most important responsibilities. There has never been a greater need for constructive oversight of the FBI. The FBI has long been considered the crown jewel of law enforcement agencies. Today, it has lost some of its earlier luster. Unfortunately, the image of the FBI in the minds of too many Americans is that this agency has become unmanageable, unaccountable and unreliable. Its much vaunted independence has transformed, for some, into an image of insular arrogance.

We now have an historic window of opportunity to examine the present state of the FBI and help guide constructive reforms to make the Bureau effective, better managed, more accountable. The current FBI director has announced his resignation. No successor has not yet been named. This is a particularly appropriate time for us to take stock and think about how we should plan for the FBI of the 21st century. I would hope that these hearings as will help the Members of this Committee prepare for the new Director's confirmation hearings as well as apprise the nominee of the challenges that confront us all.

We had invited Director Freeh here today to thank him for his public service and to hear from him what his advice would be to his successor. I thought that it would be appropriate to begin these hearings by acknowledging all the positive contributions that he has made during the last eight years. I also wanted to get his assessment of the problems that remain. He explained to me when we spoke last week that he was unavailable due to illness in his family. We regret that family illness has prevented him from joining us here this afternoon, and wish his family good health.

In recent years we have seen case after case where the FBI has fallen short—and sometimes far short—of the high standards of professionalism and integrity that we expect of our nation's premier law enforcement agency:

- Last month, a veteran FBI agent was indicted for allegedly selling some this country's most sensitive classified information to the Russians. According to the indictment, his alleged spying went on for more than 15 years before the FBI detected the source of major security breaches and intelligence losses, despite numerous "red flags" that pointed to the defendant. According to the public complaint and indictment in the case, these "red flags" included a 1986 wiretapped conversation between the defendant and a KGB officer in the Soviet embassy; the confession of a convicted American spy, Earl Pitts, who warned about another "mole" within the FBI and specifically named the defendant; the report of an FBI analyst, who also warned of a "mole" within the FBI, but whose warnings were not credited; and the defendant's own suspicious financial situation and use of FBI computers.
- We learned from press reports today that last week, a support employee of the FBI in Las Vegas was arrested for allegedly selling sensitive investigative material to organized crime for over a year.
- In the Oklahoma City bombing case, the FBI revealed only a few days before the defendant was scheduled to be executed that it had violated its discovery obligations by failing to turn over thousands of pages of documents to the defense. While the trial judge later ruled that this violation did not undermine the defendant's conviction or death sentence, the trial—judge noted that it was tip to others to hold the FBI accountable for—its

conduct. Whatever question the belated document production raised about the efficacy of the FBI, the trial judge concluded that the integrity of the adjudicative process leading to the verdict and death penalty were sound. He said: "there is a great deal of difference between an undisciplined organization or organization that is not adequately controlled or that can't keep track of its information—those are not the questions here. We're not here for the purpose of trying the FBI."

- The Oklahoma City bombing case is only the most recent one in which the FBI has violated its disclosure obligations. In 1995, a Subcommittee of the Judiciary Committee, under the leadership of Senators Specter and Kohl, held hearings on the tragic events at Ruby Ridge. The Subcommittee report, in which I joined, found that the FBI had "willfully and repeatedly failed to abide by discovery rules," and had "irreparably damaged the government's presentation of evidence at the criminal trial," causing a federal judge to impose contempt sanctions against the government.

- We have also seen cases such as those of Wen Ho Lee, Richard Jewell and Tom Stewart in which the FBI has improperly leaked information about an ongoing criminal investigation. This is a deeply serious issue that troubles all who are concerned with protecting the integrity of our justice system and the constitutional rights of our citizens. More than that, these premature leaks about suspected criminals may focus attention on the wrong persons and allow the real culprits to escape detection, to the detriment of our public safety and national security. For example, the criminal who committed the Centennial Olympic Park bombing in July 1996, during the Summer Olympic Games, remains at large. On occasion, these leaks result in substantial verdicts against the government for which we taxpayers foot the bill. Tom Stewart was paid \$6 million in damages last year as a result of the FBI wrongfully releasing damaging information that he was a criminal suspect. Wen Ho Lee's lawsuit against the government is still pending.

- Serious questions have also been raised about the FBI's use of informants. There have been cases in which FBI agents have allegedly leaked confidential law enforcement information to criminal informants, which the informants then used to commit crimes or to flee. In a case in Boston, the FBI allegedly allowed two innocent men to spend decades in prison for a murder that the FBI knew had been committed by one of its informants. In a case in New York, an FBI agent allegedly leaked information in a Mafia case about the imminent arrest of the confidential informant's son, who then fled.

This list of failures and mistakes has seriously weakened public confidence in the FBI. According to a recent Gallup poll, only 38 percent of Americans have "a great deal" or "quite a lot" of confidence in the FBI, and 23 percent of those polled had very little or no confidence in the FBI. Confidence in state and local police is substantially higher, with about 60 percent of Americans having "a great deal" or "quite a lot" of confidence in these other law-enforcement forces. This erosion of public trust threatens the FBI's ability to perform its mission. Citizens who mistrust the FBI will be less likely to come forward and report information about criminal activity. Judges and jurors will be less likely to believe the testimony of FBI witnesses. Even innocent or minor mistakes by the FBI in future cases may be perceived in a sinister light that is not warranted. Since FBI agents perform forensic and other critical work for many law enforcement agencies on the federal, state and local levels, the repercussions of this lapse in public confidence in the FBI has rippled far beyond just federal criminal cases.

To many of us in Congress, this is a particularly troubling situation. For years, we have almost never said no when the FBI has asked us for new resources. We have allocated to the FBI millions of dollars in increased funding because we all wanted to see it remain the world's leading crime-fighting agency. It should be obvious now that simply throwing more money at the FBI is not the answer. The time has come when this Committee must exercise its oversight responsibilities and take a hard, thorough and nonpartisan look at the FBI to determine what has gone wrong and what can be done to fix things.

But as we go about this process, there are several things that we need to bear in mind.

First, our purpose in holding these hearings is to find ways to restore confidence in the FBI, not to tear it down. There are many irresponsible critics of the FBI who promote their conspiracy theories on Internet Web sites and in the popular media. Fortunately, the great majority of the American people have too much common

sense than to believe them. The FBI is a vital national asset, and we need it to function effectively.

Second, we must not overlook the fact that the FBI is staffed by many brave, dedicated men and women who risk their lives protecting the interests of this country and the safety of its citizens. While we are constantly reminded of the cases where things have gone wrong, we often forget the far greater number of cases where the FBI does its job quietly, professionally and without public fanfare. Any constructive criticism of the FBI as an institution is not meant in any way to disparage its agents' sacrifices on our country's behalf.

Finally, our efforts must be, and I am confident will be, bipartisan. Over the past several weeks, senators on both sides of the aisle have expressed their concern about the present state of the FBI and discussed various legislative proposals to address the problems they have identified. This is not a Democratic or Republican issue. The future security of our country is far too important.

The question at the center of our first hearing is this: Who polices the FBI? Our focus is the mechanisms that currently exist for overseeing the activities of the FBI, and we intend to identify any gaps and problems that currently exist in FBI oversight, determine the status of oversight investigations that are currently underway and begin to formulate ways that oversight can be improved. We are extremely fortunate to have with us an outstanding panel of distinguished witnesses who have familiarity and expertise with different aspects of the oversight process. I look forward to hearing from them about how this process works now and how we can make it work better to ensure that mistakes are acknowledged, constructive recommendations for reform are adopted, and intentional misconduct is adequately punished. Our goal is to restore the luster, the effectiveness and the professionalism of the crown jewel of law enforcement agencies.

Chairman LEAHY. I turn to my good friend, the senior Senator from Utah.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Chairman Leahy. I would like to thank you for convening this hearing.

The Federal Bureau of Investigation, of course, is the preeminent law enforcement agency in the world. It plays an essential role in our criminal justice system, and its ability to investigate crimes and find out the truth is unmatched anywhere in the world.

There are millions of cases that the FBI has handled. I think we can always single out a few where it hasn't handled them very well, but that is probably true of, I believe, any organization. It may even be true of the U.S. Senate. I doubt it, but you never know.

That said, there are serious issues concerning the operation of the FBI that must be addressed in a thoughtful, substantive, and proactive way. The American people rely on the protections provided by the fine men and women at the FBI and deserve the best possible performance that the FBI can deliver.

Unquestionably, there is always room for improvement in the operation of the Bureau. The FBI, in conjunction with the Justice Department, simply must adhere to the highest standards of conduct in its investigations, in its use of informants, and in the fulfillment of its discovery obligations.

It is important, however, to keep the current problems at the FBI in perspective. The men and women of the FBI are dedicated professionals to whom we owe a great debt of gratitude. They solve difficult and important cases everyday. Despite the serious problems that exist, the fact remains that the FBI solved the Oklahoma City bombing, the World Trade Center bombing, and the terrorists

attacks in East Africa, among the literally hundreds of thousands of others that do not get the same profile in the press.

I might add that we don't see headlines about some of these great things that they do because they are not emphasized. When was the last time you saw a headline where the FBI stopped terrorist organizations in very serious attempts to spread biological and other types of chemical weapons, weapons of mass destruction? But they have.

Chairman Leahy has expressed a desire to do a series of oversight hearings on the FBI. I fully support him in this effort and commend him for his prompt attention to this matter. This Committee's oversight responsibilities are an important element of our system of constitutional checks and balances.

I think it needs to be emphasized that, in my opinion, the focus of the oversight must be to improve the FBI and prepare it to be even more effective in the 21st century. Confidence in the FBI and in the criminal justice system generally is necessary for our system of governmental law enforcement to operate effectively.

I believe we must vigorously and constructively examine the current managerial issues and focus on how to build a better FBI. In particular, I believe we should look critically at the culture of the FBI and how it is or is not effectively integrated with the Justice Department.

I also believe that as we proceed through this essential oversight process, we must continue to be careful to respect the existence of ongoing criminal investigations, especially some of these high-profile, important investigations. We have to be very careful to respect the existence of inspector general investigations and, of course, all national security issues.

Our Committee is best suited to a vigorous examination and debate of the policy issues involved and less equipped to perform the intensive factual examinations already underway in the open criminal and IG investigations. I look forward to working with Chairman Leahy and other members of this Committee to ensure thorough oversight of the Bureau, while continuing to be sensitive to the investigations and national security concerns of some of the active matters at the Bureau.

In the end, I believe that any constructive oversight and development of future reforms at the FBI must address two key issues: one, a permanent oversight mechanism, and two, a mechanism through which outside experts can bring their expertise and objectivity to bear on the possible solutions to the problems that exist at the FBI.

As to the first issue, there are various proposals, ranging from improvements to the Justice Department's Inspector General and its ability to perform oversight at the FBI, to the establishment of a separate inspector general exclusively for the FBI. I look forward to working with my colleagues in evaluating these ideas, although I generally favor working within the Justice Department structure.

On the second issue, I have announced that I have been working with Senator Schumer to develop a bipartisan, expert blue-ribbon commission to do a strategic, thorough review of the FBI and make recommendations for its improvement. I commend Senator Schumer for his leadership on this issue and look forward to working

with him and our distinguished chairman, Senator Leahy, to see that this legislation is enacted.

The Schumer-Hatch legislation would create a commission which would be able to bring outside, objective expertise to bear on the issues that currently challenge the FBI. The inspector generals are great at doing factual investigations, but they are not designed to do strategic, long-term recommendations on these important policy and managerial issues. The blue-ribbon commission can fill that gap. It is bipartisan, objective, and focused upon solutions, not headlines.

I welcome our witnesses either today or in the coming days to provide us with their views and recommendations on improving this particular legislation. I welcome all of the witnesses here today, good people, and I look forward to hearing from each and every one of you. This is a distinguished panel, and I will work with the Chairman to constructively pursue this important oversight project.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Hatch.

We have had some good effects of just having the hearings. We have had one response from the Department of Justice and the FBI. The FBI has written a letter promising better cooperation with the GAO, one of the things I raised with them. The Attorney General has asked the Deputy Attorney General to conduct a comprehensive review of the FBI.

Both of these things are welcome, and I will put that correspondence in the record.

I turn to the distinguished Senator from California.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thanks very much, Mr. Chairman, and let me join with the Ranking Member in thanking you for holding these hearings.

Mr. Chairman, I believe that every member of this Committee, on the Republican side and on the Democratic side, has a deep and abiding respect for the Federal Bureau of Investigation. I think we have seen time after time, under the most difficult of circumstances, in major criminal events, the energy, the creativity and the experience really prove to enable an arrest to be made. I think it is a very important and critical institution in our Government.

However, I have noticed a couple of things, and I am not going to read; I am just sort of going to talk about what I feel. I have seen in this very professional culture a kind of arrogance creep, and that arrogance puts itself forward in different situations.

I went through the Ruby Ridge hearings, I went through the Waco hearings. I saw where the Washington aspect of the FBI can essentially duck in a major event and the SAC takes the responsibility for what might happen. So I recognize that there is a precarious balance.

But I have seen a few things just in the popular press that have really concerned me, and let me just lay out, because everybody knows about this, the Monica Lewinsky case, where FBI agents

held that young woman for a long period of time without allowing her to have counsel, and as a product she was terrified. That wasn't necessary. Why do it? That is the first instance.

Another instance was in the Wen Ho Lee case. I think Mr. Bromwich has suggested that it is almost impossible to imagine that such unprecedented charges, the first ever criminal charges under the Atomic Energy Act, would have been made if Mr. Lee had not been previously targeted by the FBI.

Then there was the reported conduct during the interrogation of Wen Ho Lee, when he was compared to the Rosenbergs, and the insinuation was that if he didn't cooperate he would go the way of the Rosenbergs. If, in fact, that happened, it is not professional conduct of well-trained law enforcement officers, I don't believe.

I have also seen instances of leaking information, and I don't think that is professional conduct either. Let me give an example. During the World Trade Center case, it is my understanding that one of the defendants, without a lawyer, set up a meeting with prosecutors and FBI agents to negotiate for a lighter sentence. At that meeting, it is reported that the defendant incriminated another terrorist defendant, a person suspected of helping bomb our embassies in Kenya and Tanzania who was then under arrest and awaiting trial.

The substance of that secret meeting was then leaked practically verbatim to the New York Times, which ran a lengthy article on October 22, 1998. So, in other words, the New York Times ran a story about one defendant's attempt to gain a lighter sentence by offering uncorroborated allegations against another defendant, and did so while that second defendant was still awaiting trial. So I think disclosures like that, whether it is a question of management, whether it is a question of constant in-service training, to me are wholly improper.

That even hit closer to home last week when a Federal judge ruled that a Justice Department official—and I don't know whether this was FBI or Justice—may have leaked information in the New York Star Ledger, in violation of Federal grand jury secrecy rules. I would like to just quickly read from that opinion.

"In the March 6, 2000, Star Ledger article, submitted by Senator Torricelli, information regarding the issuance of grand jury subpoenas to Committee fundraisers and donors is attributed to a senior Justice Department official, who was later described as speaking on the condition of anonymity. The attribution clearly satisfies the second prong of the Lance test—that is the test for determining whether the movant has made a *prima facie* case for showing a violation of grand jury secrecy rules—"because officials in the Justice Department, of which the task force was a part, qualify as persons covered by Rule 6(e)'s secrecy provisions."

Now, of course, we don't know who that senior official in the Justice Department is, but these again, I think, are things that show a kind of arrogance, if you will, creeping into how you handle individuals and how you handle case material. So I am going to ask some questions—all of you are very distinguished and very knowledgeable—about what you might do to handle that.

Thanks, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Grassley.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. "Restoring Confidence in the FBI" is a particularly good title for this hearing because confidence is what truly goes to the heart of the issue that we are here to discuss today.

My father taught me the FBI could do no wrong, but I think confidence in the FBI, particularly the presumption of integrity, has been shaken. There is no question that for too long the FBI has broken faith with the American people. The time for meaningful and lasting reform is now, and it is up to us to help the FBI regain the trust and confidence of the American people.

As an advocate for FBI reform, what often gets lost in my comments is the respect that we must all have, and I have, for the thousands of men and women who are serving their country well as FBI employees. But the FBI management is broken, and this does a real disservice to the hard-working agents on the street.

Now, at long last, we have consensus for reform. Reform should be structured around three areas: accountability, jurisdiction and leadership; accountability through the enhancement of executive and congressional oversight, jurisdiction through the streamlining of the FBI's investigative responsibilities, and leadership through the selection of a new director with an appetite for reform and the wherewithal to accomplish it.

The issue of accountability is the most important part of the reform effort. The FBI is buried under a mountain of evidence proving that it cannot police itself. The culture within the FBI is so entrenched that there can be no way of changing it without introducing an element of independent oversight.

There are many options, but at this time I believe the option that we should choose is to enhance the existing structure of the DOJ Inspector General as the more viable course to take. This is a position that I have been advocating since the FBI Crime Lab investigation in 1997.

I am hesitant to create an entirely new inspector general bureaucracy in the FBI that may only serve to isolate and insulate the Bureau further from the rest of the law enforcement community. It is exactly this notion of privilege and separateness that helps to feed the Bureau's culture of arrogance.

With regard to jurisdiction, many of you may remember the Webster Commission. I am pleased that Judge Webster is here. One of the recommendations of that commission was to expand jurisdiction of the FBI and that the DEA and the ATF should be folded into the FBI.

Here today, sitting in the wake of the Hanssen and McVeigh fiascoes, it seems to me that is not a viable option. It couldn't be clearer that the FBI has simply become too unwieldy to be effectively managed. The answer to the problem at the Bureau will not be found in increasing its jurisdiction, nor will the concerns of the American people be addressed by creating a de facto national police force.

The history of congressional response to the FBI's problems has usually been that the FBI ends up with a bigger budget, more pro-

gram jurisdiction, and the director walks out of this room with a nice pat on the back. I believe that the FBI will become a more efficient and accountable organization through the narrowing of its investigative focus.

Finally, with an opening for the Director of the FBI, this gives us a real opportunity. President Bush will be naming that new director, and that person needs to make changes. This person needs to change the kind of culture that places publicity and image before basics and fundamentals. This person needs to change the kind of culture that holds press conferences in high-profile cases before all the facts are in. We have seen the consequences of this approach in cases such as Richard Jewell, Wen Ho Lee, and the TWA 800 investigation.

The new director needs to change the kind of culture that suppresses dissent and discourages independent oversight. Director Freeh once stated the following with regard to the FBI: "We are potentially the most dangerous agency in the country if we are not scrutinized carefully." I agree, so let us now get down to the business of helping the FBI and its new director regain trust and confidence from the American people.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Mr. Chairman, Senator Hatch, colleagues, and distinguished guests; today, we highlight the issue of FBI oversight. As most of you know, I have been a long-time advocate of the need for enhanced FBI oversight and I am very pleased to be able to address this distinguished group on this vitally important issue.

I would like to begin by saying that the title of today's hearing, "Restoring Confidence in the FBI", is particularly appropriate because the word "confidence" is what truly goes to the heart of the problem we are here to discuss today. All of the public institutions in this country have a moral contract with the American people. This contract—deceptively simple in design balances the trust of the American people with the performance of those entrusted to their service. I grew up—the son of a farmer—with a whole generation of people believing the FBI could do no wrong. My father taught me to be proud of the FBI. But now that confidence—that presumption of integrity—has been shaken. Let there be no question, for far too long, the FBI has broken faith with the American people. When our public servants fail in their performance, then they lose the trust and confidence of the American people—and the moral contract is broken. The time for meaningful and lasting reform is now. It is up to us to rewrite and restore that moral contract, and to help the FBI regain the trust and confidence of the American people.

As an ardent advocate of the FBI reform, what often gets lost in my comments is the respect that I have for the thousands of men and women serving their country as FBI employees. My criticisms should in no way minimize the great sacrifices that our honest and hardworking FBI agent and support personnel make every day for our country. But these men and women—as do the American people—need and deserve an organization that has integrity and credibility. The FBI management system they are working within is broken, and this does a real disservice to the hardworking agents on the street. For too long the FBI has grown essentially unchecked by any meaningful oversight. The result has been the development of a pervasive atmosphere of arrogance. This cloud of arrogance permeates the every day activities of the Bureau and shows contempt for any public or private entity that dares to question its motives or performance. And, perhaps more importantly, this cloud of arrogance also shows contempt for those within the FBI organization who are brave enough to sound the alarm. I sponsored the Whistleblower Protection Act in 1989, yet to this day, the FBI has failed to adequately protect FBI agents who speak up about management problems. Now, at long last, it appears we have a consensus for reform. We can agree, at least, something must be done. I would like to suggest that the plan for reform should be structured around three areas: Accountability, Jurisdiction, and Leadership. Accountability, through the enhancement of executive and congressional branch oversight; Jurisdiction, through the streamlining of the FBI's

investigative responsibilities; and Leadership, through the selection of a new Director with an appetite for reform and the wherewithal to accomplish it.

First, I would like to address the important issue of accountability. Here, I believe, is the most vital part of the reform effort. Let it be understood, the current system involving the FBI's Office of Professional Responsibility cannot be allowed to continue as is. The FBI is buried under a mountain of evidence proving that it cannot police itself. The culture within the Bureau is to stifle dissent and to marginalize those who would expose waste, fraud and abuse. Senior management places a higher value on maintaining image rather than rooting out wrong. This attitude is so entrenched in the culture of the FBI that there can be no way of changing it without introducing an element of independent oversight. The two most prominent options being discussed are to either create an independent Inspector General of the FBI, or to enhance the existing powers of the Inspector General of the Department of Justice. Either of these options would bring a much-needed element of oversight and accountability to the FBI that is not there today. But, at this time, I would argue that the option to enhance the existing structure of the DOJ Inspector General, a position I've taken since the FBI Crime-Lab investigations in 1997, is the more viable course to take for the following reasons. First, there is already a structure in place at DOJ. While some have argued that the size and importance of the FBI and the sensitivity of their operation calls for a separate IG, I would argue differently. As part of the Department of Justice, the FBI should be treated as such, and should not be accorded any special treatment. And, I am hesitant to create an entirely new bureaucracy that may only serve to isolate and insulate the Bureau further from the rest of the federal law enforcement community. It is exactly this notion of privilege and separateness that helps to feed the Bureau's culture of arrogance.

In addition to the enhancement of the powers of the DOJ IG, I would advocate some additional provisions, such as: the addition of whistleblower protection provisions; clarification on the provisions for agency, departmental, and congressional notification; and clarification on the provisions for agency and/or departmental interference in IG investigations.

Further, Congress needs to better fulfill its constitutional responsibility of oversight. One way this could be improved is through the creation of a Subcommittee within the Committee on the Judiciary that would be directly responsible for FBI oversight and would complement the reporting structure already in place.

There has also been a proposal for an, "FBI Review Commission", which would undertake a comprehensive review of the FBI in its entirety and make recommendations for congressional action. I had an opportunity to see a draft outline of this Commission's mandate and I was very impressed. But I have to express some reservations about the idea for the following reasons.

First, as I mentioned earlier, the time for reform is now. We already know what is wrong with the Bureau. If we wait eighteen months for a commission to make recommendations, we may very well lose the momentum for reform that we have right now. In this age of 24-hour news cycles, the public will soon lose their appetite for FBI reform, Congress will move on to other issues, and the FBI will continue to operate as before. We cannot afford to wait to make these important changes. Secondly, if past results are any guarantee of future performance, the history of FBI commissions don't inspire much confidence in their ability to effect change. As a matter of fact, the end result has usually been that the FBI ends up with a bigger budget, more jurisdiction, and the Director walks out with a nice pat on the back. However, in order to take advantage of some of the good ideas presented within this proposal, perhaps it would make sense to allow the new Inspector General entity to follow through on this study, and conduct a comprehensive review of the FBI as part of their initial directive.

Next, I would like to address the issue of FBI jurisdiction. As many of you may remember, the Webster Commission on the Advancement of Federal Law Enforcement, convened in part due to Waco and Ruby Ridge, actually recommended the expansion of the FBI—that the DEA and the ATF should be folded into the Bureau. Here today, sitting in the wake of the Hanssen and McVeigh fiascos, I think even Judge Webster would have to admit the folly of that notion. It could not be any clearer that the FBI has become too big and too unwieldy to be effectively managed. The answer to the problems within the FBI will not be found in increasing their jurisdiction; nor will the concerns of the American people be assuaged by creating a de facto national police force. The expansionist philosophy of the FBI only serves to feed their culture of arrogance. To be sure, even though the FBI is already overburdened with jurisdiction, it is fiercely protective of its current turf, while continuing to move like the Pac Man into new areas. Yet, it has been proven time and again that the FBI cannot maintain effective partnerships with our public and pri-

vate sectors. It doesn't need more jurisdiction, it needs less. Let the Bureau continue to operate in its core areas such as counter-intelligence, counter-terrorism, and organized crime. But, I believe the FBI will become a more efficient and accountable organization through narrowing its investigative focus and sharing its disparate jurisdictional responsibilities with other law enforcement agencies.

Finally, I want to address the matter of leadership. With an opening for Director of the FBI comes an opportunity. President Bush will be naming a new Director, and that person needs to make changes. I've sent a letter to the President, asking him to pick a new Director who understands the problems with the FBI management culture and is committed to restoring public confidence. This person needs to change the kind of culture that places publicity and image before basics and fundamentals. This person needs to change the kind of culture that holds press conferences in high-profile cases before the investigation is complete and all the facts in. We've seen the consequence of this approach in celebrated cases such as with Richard Jewell, Wen Ho Lee, and the TWA 800 investigation. The American people deserve an FBI that doesn't make these kinds of mistakes. But more importantly, the American people deserve an agency that is honest and forthright about their errors. So, finally, our new Director needs to change the kind of culture that suppresses dissent and discourages independent oversight. Director Freeh once stated the following with regard to the FBI; "We are potentially the most dangerous agency in the country if we are not scrutinized carefully." I couldn't agree more. So, let us now get down to the business of helping the FBI, and its next Director, regain the trust and confidence of the American people.

Chairman LEAHY. I thank the Senator from Iowa, and would note that he has been very consistent in looking at these issues over the years and has been very constructive in his criticism.

The Senator from Wisconsin, Senator Feingold.

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you, Mr. Chairman, for calling this hearing. I would ask that my full statement be placed in the record.

Chairman LEAHY. Without objection.

Senator FEINGOLD. The issue of Federal Bureau of Investigation oversight is timely because of obviously some specific recent cases, but it would be significant and welcome at any time as an opportunity to examine the role of the FBI in the relationship of the U.S. Government to the American people.

Let me join in the praise that others have indicated for so much of what the FBI does. I recently ran into a number of FBI people at the Milwaukee airport and could tell that it was a tough time for them, and expressed my positive feelings about many things that it does.

But the most immediate reasons for this hearing are a series of setbacks for the FBI in recent years. Some of the others have been listed, but I just have to mention again the missing McVeigh documents, the Hanssen case, the Wen Ho Lee case, the years-late production of the tapes in the Birmingham bombing, the problems in the FBI Lab, Richard Jewell and the Olympic bombing, and charges of racial bias in promotions at the FBI are some that come to mind.

Director Freeh is understandably not here due to important personal concerns. I wish he were here because he is best equipped to illuminate our examination of FBI oversight. I hope that his eventual successor is here or at least listening to this hearing because his successor will be in the best position to help us further deter-

mine what changes in FBI oversight are needed and to lead the FBI in embracing these changes.

For today, the immediate objective is to understand the state of oversight of the FBI and to determine what changes may be necessary in the oversight process. In particular, I would like to hear from the witnesses on a few matters.

What is the current range of oversight mechanisms to which the FBI is subject and the status of the various inquiries now underway? How did it come to pass that the FBI and DEA are not as immediately subject to the scrutiny of the Department of Justice Inspector General, as are other agencies and offices at the Justice Department? What is the rationale for that arrangement and is it justified?

Is it fair to assume that any of the recent troubles at the FBI may have been caused by deficiencies in oversight of the Bureau? Is there anything unique to the history, culture and mission of the FBI that makes it less accommodating of vigorous oversight? Finally, how can the Senate be most constructive in carrying out its oversight responsibilities with respect to the FBI?

I welcome the witnesses and look forward to their testimony.

Thank you, Mr. Chairman.

[The prepared statement of Senator Feingold follows:]

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Mr. Chairman. Thank you for calling this hearing today. The issue of Federal Bureau of Investigation oversight is timely because of some specific recent cases, but it would be significant and welcome at any time as an opportunity to examine the role of the FBI in the relationship of the United States government to the American people.

The most immediate reasons for this hearing are a series of setbacks for the FBI in recent years—we have heard the list: the missing McVeigh documents, the Hanssen case, Los Alamos and the Wen Ho Lee case, the years-late production of the tapes in the Birmingham bombing, problems in the FBI lab, Richard Jewell and the Olympic bombing, charges of racial bias in promotions at the FBI.

It's a familiar, if troubling, list, but also familiar are the storied successes throughout the history of the FBI, from the days of Prohibition era gangsters and bank robbers to the pursuit of the agents of our adversaries in the Cold War, to the great drug busts of recent decades and the continuing effort to contain organized crime and the threat of international terrorism. And there can be no question that the FBI remains an outstanding and effective law enforcement agency. Maybe the greatest triumph of the FBI has been the terrorist attacks that never happened. While the FBI over the years has had its lapses in respecting the civil liberties of some Americans, perhaps the greatest achievement of the Bureau has been that it has done so well in solving crime and foiling conspiracies while operating in a nation that so respects individual liberty.

So there is something that at first seems incongruous about the recent problems we have heard, and the FBI we grew up admiring. But perhaps the admiration, even awe, that many have felt toward the FBI is related to the inadequacy that may exist in FBI oversight. Perhaps it accounts for the uniquely limited oversight regime to which the FBI is subject. Perhaps it accounts for the reality that the FBI apparently is seen by most of the public and perhaps some in the Bureau itself, as having an identity virtually separate from the Department of Justice of which it is a part, and remote from the authority of the Attorney General, to which the FBI Director and all FBI personnel ultimately report. Perhaps it is reflected in the occasional hesitance of Congress and even Presidents to question the actions of the FBI and its leaders.

Director Freeh understandably is not here today, due to important personal concerns. I wish he were here, because he is best equipped to illuminate our examination of FBI oversight. I hope that his eventual successor is here, or least listening to this hearing, because his successor will be in the best position to help us further

determine what changes in FBI oversight are needed, and to lead the FBI in embracing those changes.

But for today, the immediate objective is to understand the state of oversight of the FBI and to determine what changes may be necessary in the oversight process. In particular, I want to hear from the witnesses about a few questions:

- what is the current range of oversight mechanisms to which the FBI is subject and the status of the various inquiries now under way;
- how did it come to pass that the FBI and DEA are not as immediately subject to the scrutiny of the Department of Justice Inspector General as are other agencies and offices at the Justice Department. What is the rationale for that arrangement? Is it justified?
- is it fair to assume that any of the recent troubles at the FBI may have been caused by deficiencies in oversight of the Bureau?
- is there anything unique to the history, culture and mission of the FBI that make it less accommodating of vigorous oversight?
- how can the Senate be most constructive in carrying out its oversight responsibilities with respect to the FBI?

I welcome our witnesses and look forward to their testimony. I may have further questions for them individually. Thank you Mr. Chairman.

Chairman LEAHY. Thank you.
The Senator from New York.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank you for your quick and immediate leadership in holding this important hearing.

I want to begin by emphasizing that I consider myself a longtime supporter of the FBI. It is the No. 1 law enforcement agency in the world. We have to make sure it stays that way. I have also been a supporter of my fellow New Yorker, Director Freeh. He has done an excellent job in many areas, particularly in pursuing terrorist cases and instilling integrity at all levels of the Bureau. But, Mr. Chairman, sometimes you owe it to a friend to look him in the eye and tell him the hard truth, and that truth is this: the FBI has made mistake after mistake after mistake. And many of us are wondering now if those are random mistakes or there is not something deeper.

From Richard Jewell to Wen Ho Lee, from the Crime Lab to the McVeigh documents, from rogue informants to Robert Hanssen, serious questions are now dogging the FBI. Just this morning, there are reports that an FBI security expert sold classified lists of witnesses and informants to the mob and other targets of criminal investigation in my State of New York.

There have been several examinations of some of the incidents I have mentioned over the last few years, and each has shed light on a particular episode and spawned particular suggestions, but none have looked at the whole picture. It is high time to step back and take a comprehensive look at the Bureau from top to bottom.

Has the FBI's culture become too insular and unresponsive to warning signs? Has the phenomenal growth of recent years made it even harder to bring about change? Whatever it is, the public is watching and they are beginning not to like what they see. Poll after poll shows confidence in the FBI plummeting, and that is dangerous for an agency that needs the cooperation of average citizens, that needs to recruit informants, that needs to persuade

judges and juries in court, an agency we all need to be in tip-top shape.

So, Mr. Chairman, in order to give the FBI the thorough and systematic review that it badly needs, Senator Hatch and I are introducing the FBI Reform Commission Act today. The bill will set up a blue-ribbon commission of law enforcement experts to look at all aspects of the FBI. It will determine whether all the FBI really needs at this point is a tune-up or, as many fear, a more fundamental overhaul.

This kind of deep and thorough oversight is very much needed. We don't want to look at each individual case, except to see whether they form a pattern of why things went wrong. Congress can do very good oversight into specific issues, but this kind of thorough, top-to-bottom review can only be done by a group of experts who devote their full time to it.

You know, Mr. Chairman, when one reaches a certain age, your physician will tell you, instead of the annual checkup, it is time to look at you inside out, top to bottom, and see what might be wrong. It is now that time for the FBI.

So, specifically, the blue-ribbon commission will function outside the FBI and will analyze the way the FBI monitors itself, whether outside oversight is needed, how it manages information and conducts investigations, and other issues. The commission will then recommend to the President and the Congress systematic reforms that are necessary. They will be appointees of the President and of the Majority and Minority Leaders of both Houses.

As longtime friends and supporters of the FBI, Senator Hatch and I believe this is the best way for the Bureau to put problems behind it and begin rebuilding the public trust. Every bureaucracy needs an in-depth, critical examination every few decades, and that moment has arrived for the FBI. In the end, finding and fixing the problems at the FBI won't just leave the Bureau better off, it will leave all of us better off, and we have to begin that process now.

Chairman LEAHY. I thank the Senator from New York. When he mentioned those of a certain age, I leaned over to Senator Hatch and I said I am not sure which one of us he is referring to, but I know it couldn't be Senator Hatch because he looks much younger.

The Senator from Illinois.

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR
FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thank you very much, Mr. Chairman, and thanks for scheduling this hearing. It is timely, and I am glad we have a chance to consider the serious issue before us. Though not altogether pleasant, it is an important assignment.

People have referred to the public opinion polls, and they are pretty clear that an organization that enjoyed universal respect has now come under fire and Americans have many questions about the leadership at the FBI. That shouldn't take away from the thousands of special agents and other staff people who literally get up every day, put on a badge and put their lives on the line for America, fighting terrorism and combatting drugs and organized crime,

and the long agenda of responsibilities we have given to the Federal Bureau of Investigation.

Yet, despite the Bureau's many accomplishments, we continue to see a litany of embarrassing blunders. They have been recounted over and over in these introductions—the loss of 4,000 pages of critical material for the McVeigh trial, the situation involving Wen Ho Lee, the whole question involving Richard Jewell at the 1996 Atlanta Olympic Park bombing, the information that has come out from Boston involving FBI agents withholding informant reports that would have aided the defense of Joseph Salvati, who spent 33 years in prison for the 1965 murder of Edward Deagan, and then on February 20 of this year the chilling disclosure that one of its own, Agent Robert Hanssen, had operated undetected within the agency as a Soviet mole for 15 years, or even longer.

Are these merely coincidences? Some have noted they are only a handful of instances in an agency which deals with thousands of challenges every single day. I think that I would like to speak to the fact that we collectively hope that it is not just a matter of time before another incident of ineptness percolates to the surface, calling into serious doubt the agency's adherence to values that Director Freeh recounted when he was before this Committee a few years back.

The cover story of a recent U.S. News and World Report asks squarely "What Is Wrong with the FBI: Cracking the Case." It is time we get that question answered and we get our Nation's No. 1 investigative force's house back in order.

What is so troubling is that the issues that we are addressing today didn't just materialize. Take a look at two headlines from Time magazine: "The weight of the evidence: the case against McVeigh is strong, but the mess at the FBI and the babble of witnesses make it vulnerable"; and the second one: "The FBI: the gang that couldn't examine straight."

The importance of these two headlines is the fact that they appeared in Time magazine on April 28, 1997, 4 years before the disclosures which were of such great embarrassment to the FBI and so startling to the American people. Those headlines 4 years ago really could have been headlines leading to today's hearing.

We have known for a long time that there are things that need to be changed in the FBI. I think we all understand the legacy of J. Edgar Hoover. It was a legacy which exulted independence from political oversight. In fact, Mr. Hoover's tactics have been well documented when it came to dealing with Congress. He held Congress at bay because of the information that he had collected, but in holding the political officials at bay, he also held at bay political accountability, and that is why we are here today.

This morning, Senator Arlen Specter and I introduced legislation to create a separate inspector general for the FBI. I notice that one of the witnesses here has characterized it a little differently than the way we wrote it. This inspector general would be under the supervision of the Attorney General, like the Inspector General for the rest of the Department of Justice.

What we have found in our investigation is that the Hoover legacy and the current leaders at the FBI have created a fortress mentality that has really held away the type of oversight that we

demand of every Federal agency. I don't believe that we can assault that fortress without putting someone behind the gates. That is an inspector general working full-time, as we have an inspector general in 57 other Federal agencies. If the model doesn't work here, how is it working in other agencies? I think it is an important question we need to ask and answer.

I applaud the idea of a commission to look in depth at many different things that might be considered, but it is an ad hoc approach which will give us guidance. What we need is a person on the ground, in the agency, accountable to the Attorney General as well as to Congress, reporting on ways to make this agency more effective.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

I don't see any other Senators here. I will put a statement by Senator Kohl in the record.

[The prepared statement of Senator Kohl follows:]

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

A little less than six years ago, the Director of the Federal Bureau of Investigation appeared before the Judiciary Committee to address concerns about the F.B.I.'s actions during Ruby Ridge. I was the ranking Democrat on that important investigation. During the course of that inquiry, we found widespread problems within the F.B.I. and made a number of suggestions for reform ranging from the way the F.B.I. trains its snipers to the way it handles documents.

In light of the recent problems with the McVeigh prosecution, one section of the report has immediate relevance:

"The Subcommittee is concerned that, even today, officials of the FBI may not be fully cognizant of their constitutional duty and statutory obligations with regard to criminal discovery. . . . We expect the FBI to improve the education of its agents in this regard.

"The Subcommittee asks the FBI to institute programs to improve the quality of its response to criminal discovery demands, including attention to the organization, coordination and monitoring of discovery requests and responses."

We should be very concerned that the F.B.I. has not succeeded in addressing all of the concerns raised in the report almost six years ago. The problems were serious then, and the mishandling of documents in the McVeigh case demonstrates a continuing and perplexing lack of organization. What else is going on at the F.B.I.? How many other concerns have been given short shrift?

Of course, this hearing concerns much more than the F.B.I.'s ability to comply with their criminal discovery responsibilities. None of those issues, however, is more important to public confidence in the F.B.I. than the agency's capacity to observe the most basic rules of criminal procedure. This problem potentially infects every federal criminal case.

As we learned during the Ruby Ridge hearings, overseeing and investigating the F.B.I. is not easy. But when done well, it can be productive and effective. The first principle of F.B.I. oversight must be that our goal is to improve and respect this vital agency—not to attack or destroy it. F.B.I. agents are dedicated and hard-working individuals who have a lot to be proud of. I look forward to what can be done to instill public confidence in the Bureau.

Chairman LEAHY. We will leave the record open for statements by any other members of the Committee who couldn't be here.

Gentlemen, I thank you for being patient. This is matter of some concern; I think the fact that, again, we have heard from people on both sides of the aisle who want to look into this.

We are fortunate to have Senator John Danforth here. He is currently a senior partner at the St. Louis law firm of Bryan Cave. Senator Danforth was asked by former Attorney General Reno to

lead an investigation into the events at the Branch Davidian compound in Waco. Last July, he issued an interim report on that.

On a personal note, I would say that I had the pleasure of serving with Senator Danforth for 18 years here in the Senate. We joined hands on a number of issues, traveled together, did a number of things together, and he is one of the most respected people we have had in the Senate in either party.

Glenn Fine is the current Inspector General of the Department of Justice. He was appointed to that office in December of last year. He has been with the IG's office since 1995. Attorney General Ashcroft has commissioned Inspector General Fine to conduct investigations on the reasons behind the FBI's belated document production in the Oklahoma City bombing case and whether the FBI knew or should have known about alleged spy Robert Hanssen's espionage activities. I have discussed both of those issues with the Attorney General. I know of his concern and I know of his respect for Mr. Fine, which we join in.

Our next witness would then be Judge William Webster. Judge Webster is currently a senior partner with the Washington law firm of Millbank Tweed. Judge Webster has a distinguished record of public service. He was a member of the Eighth Circuit Court of Appeals. He was director of both the FBI and the CIA, I think the only person who has held both of those positions. Most recently, in the wake of the apprehension of Robert Hanssen, Attorney General Ashcroft and FBI Director Freeh asked Judge Webster to chair a blue-ribbon commission to examine the Bureau's internal security procedures.

Judge Webster is well known to all here in the Senate and has high regard and respect from all members of the Senate.

Michael Bromwich is currently a litigation partner in the Washington and New York law offices of Fried Frank. Mr. Bromwich was Inspector General of the Department of Justice from 1994 to 1999. During his tenure, he conducted numerous investigations on topics ranging from the FBI Crime Lab issues that we have talked about earlier today, to the Aldrich Ames affair, to the handling of classified documents in the campaign finance investigation.

Our final witness is Mr. Norman Rabkin, who is the Managing Director of the General Accounting Office's Office of Special Investigations. He has on several occasions conducted investigations into FBI activities.

Senator Danforth, would you lead off, please.

**STATEMENT OF JOHN C. DANFORTH, FORMER U.S. SENATOR
FROM THE STATE OF MISSOURI**

Mr. DANFORTH. Mr. Chairman, thank you very much.

Mr. Chairman, I was special counsel in the Waco investigation, and to me one of the lessons of the Waco investigation is the importance of candor and openness in the FBI, in Government in general, and the ability to admit mistakes, when people make mistakes or know of mistakes, and to come forward and be able to talk about them and correct those mistakes.

The situation before I became special counsel was this: in the summer of 1999 Time magazine had a poll and the poll said that 61 percent of the American people believed that the FBI started

the fire at Waco. Now, when 61 percent of the American people believe such a dire thing as that Federal agents started a fire that killed some 80 people, that is a real breakdown in public confidence in their Government. That is why I believed that the Waco investigation was so important.

We looked into some very dark charges that had been made against the FBI, that the FBI started the fire, that FBI agents fired guns into the complex when the building was on fire to pin people into it. In our investigation, which lasted 14 months and cost \$17 million, we proved with absolute certainty that these dark thoughts about the FBI were definitely not true. There was no real evidence to support these charges, and there was overwhelming evidence to prove the negative that they didn't happen.

So the question is how could it be that 61 percent of the people of our country believed that the FBI did these things? What happened was this: right after the tragedy at Waco, that same afternoon the FBI in its statement said that no pyrotechnic tear gas devices were used at Waco that day. Subsequently, that same statement was repeated a number of times. It was repeated in testimony before the House by both Attorney General Reno and then-FBI Director Sessions.

Sitting in the room behind both General Reno and Director Sessions was the commander of the Hostage Rescue Team, and this person was the person who gave the instructions to fire pyrotechnics that morning and he did not correct the witnesses.

Now, in fact, the use of pyrotechnics that morning had nothing to do with the start of the fire, absolutely nothing. The pyrotechnics were fired 4 hours before the fire broke out and they were aimed at a concrete structure 75 feet away from the complex. So it had no effect at all, but a misstatement was made and nobody corrected it, including the person who gave the command to use the pyrotechnics.

And it was not known until more than 6 years after the tragedy that pyrotechnics had been used. Then, after it became known, of course, the public reaction, or a lot of the public said, well, we have been fooled, we have been lied to; something happened and we didn't know about it. They suspected the worst. That was the story of Waco, and that is what triggered the breakdown in public confidence and that is what led to this very extensive investigation that we conducted.

I believe that there was a lack of candor on the part of the FBI and on the part of the Justice Department over a period of 6 years. I don't think it was a cover-up of a bad act. I think it was basically trying to cover embarrassment. Somebody made a mistake in a statement, and mistakes aren't permitted and let's not admit to mistakes, so let's not say anything to set the record straight. I believe that really is the lesson of Waco.

I have in my written testimony, and I could provide for the Committee more examples of during the course of the investigation where the FBI was less than forthcoming in providing information to my investigators. That is true, but I think it is also a sign of the more general problem, and that is that there is a lack of openness and a lack of willingness to say, well, we are a Bureau that makes mistakes and therefore we don't want anybody to look at us.

This is not a uniform position within the Bureau. Director Freeh was very forthcoming in helping us, and a number of agents were. The Hostage Rescue Team that participated in the events of April 1993 were very open in describing exactly what happened. I think it is important to recognize that we can't tar everybody with a brush here. But there certainly were people within the FBI who were less than forthcoming, and it complicated our investigation and it was part of a general problem.

Now, Mr. Chairman, my red light is on and I promise you I won't speak for more than a minute, but I do want to say this as we are looking at the FBI. If I am correct that the problem is a lack of willingness to correct mistakes and be open about mistakes, it is very important that we as a country do not create a mind set where mistakes are just intolerable and where they are so unforgivable that the natural reaction is I am not going to let you know about them.

I think that is what happened in the Waco case. I think it happened right after the disaster and I think it happened during our investigation, where people did not want to come absolutely clean and where they wanted to hide the ball because they were afraid of being humiliated. I really believe it is important that we make a clear distinction between mistakes which all of us are going to make and we encourage people to come clean, and the real expose material which is the subject matter of a lot of hearings and a lot of investigative reporting.

The FBI did not do anything that was dark at Waco, but some of its people were afraid to come forward with the truth for fear of embarrassment, and that is what created the breakdown in public confidence.

[The prepared statement of Mr. Danforth follows:]

STATEMENT OF JOHN C. DANFORTH, FORMER U.S. SENATOR FROM THE STATE OF MISSOURI

After 14 months of exhaustive investigation, costing the taxpayers \$17 million, I am absolutely convinced that the FBI had nothing to hide about Waco. The FBI did not do the dark things some people suspected. Agents did not cause the fire that killed scores of Branch Davidians. Agents did not fire guns into the complex. The evidence exonerating the FBI is overwhelming on these points. Evidence implicating the FBI is non-existent.

Yet, some FBI personnel and some Justice Department lawyers were not forthcoming in reporting the events at Waco, and some FBI personnel were not cooperative with my investigation.

Lack of openness and candor caused and then complicated my investigation. And, far more important, lack of openness and candor undermined public confidence in government.

On August 26, 1999, a Time magazine poll indicated that 61 percent of the public believed that federal law enforcement officials started the fire at Waco. That is what I mean by undermined public confidence in government. Absolutely no evidence supported this terrible belief. Its principal cause was lack of openness and candor by some people in the Justice Department and some people in the FBI.

Beginning on the day of the fire, the FBI and the Justice Department insisted that no pyrotechnic tear gas rounds had been fired at Waco. This was an innocent but mistaken assertion. An FBI agent had fired three pyrotechnic rounds at a target 75 feet away from the Branch Davidian complex, four hours before the fire started. The firing of pyrotechnic tear gas rounds had no bearing on the tragedy that followed.

Some FBI and Justice Department officials who knew of the pyrotechnic rounds were not forthcoming in setting the record straight. Had they come forward with the truth, there would have been no cause for believing there was any implication

with the fire. Instead, when the public learned that pyrotechnics had been used and not disclosed, 61 percent assumed the worst.

My thoughts about why people who knew the truth didn't tell the truth are speculative, but I would bet a lot that I'm correct. I think that the motive is not to hide evil deeds, but to avoid embarrassment. A long standing value of the FBI is not to embarrass the FBI. Mistakes are embarrassing, so, rather than admit them, cover them up.

Late in April, 1993, the Hostage Rescue Team commander who had authorized the use of pyrotechnics sat silently through the Congressional testimony of Attorney General Reno and FBI Director Sessions without correcting their mistaken statements suggesting that pyrotechnics had not been used. To have corrected the FBI's previous denial about pyrotechnics might have embarrassed the Bureau.

In 1996, an FBI attorney neglected to transmit information about the use of pyrotechnics to a Justice Department attorney. I think that her negligence was an embarrassment to her, perhaps something that would jeopardize her career. So she began lying about her negligence to my investigators.

The irony is that attempts to cover up embarrassment cause embarrassment to the Bureau, and destroy public confidence as well.

It is important to keep things in perspective. Every instance of failure to produce records isn't a cover-up or an intentional effort to avoid embarrassment. In the Waco investigation, we examined 2.3 million pages of documents. In major cases such as Ruby Ridge, Waco and Oklahoma City, hundreds of FBI agents are involved, and all of them are generating paper. I am sure that systems for managing information can be improved, but I am sure that there will always be a drawer somewhere or a box somewhere with something in it. So I would caution against a standard of perfection.

However, it was clear in the Waco investigation that at least some people in the FBI were cavalier or resistant in turning over evidence to outsiders.

Until September, 1999, the FBI denied the existence of Forward Looking Infrared (FLIR) tapes containing audio evidence of the approval of pyrotechnics. The government did not turn them over during the criminal trial of surviving Branch Davidians, nor in response to a Congressional request in 1995, nor in response to specific FOIA requests from 1995 to 1997. Then, in late August, 1999, the FBI located at HRT headquarters a previously undisclosed FLIR tape. On September 1, 1999, two more tapes mysteriously appeared in an FBI file cabinet. To say the least, the FBI was cavalier in not producing this evidence.

Days after the tragic fire, FBI agents attempted to disable by gunshot a pyrotechnic projectile found at the scene. Obviously this was evidence that pyrotechnics had been used. One of the supervising agents on the scene took notes of this event; however, instead of keeping his note pad describing this event in his office with his other notes, he kept it in the attic of his home. A second supervising agent repeatedly and implausibly told our investigators that he had no recollection relating to pyrotechnic tear gas at Waco.

It's important to recognize that FBI agents who actually participated in the tear gas insertion were completely forthcoming in describing what happened, including the use of pyrotechnics. Also, Attorney General Reno, Deputy Attorney General Holder and Director Freeh clearly called for cooperation with my investigation. Similarly, notwithstanding our problems with the General Counsel's office of the FBI, I believe that the General Counsel himself, Larry Parkinson, was trying to be helpful. But, while many were willing to help, others kept information from us.

The FBI's Office of General Counsel was not as cooperative as its head. Convinced that certain individuals were withholding information from our investigators, we threatened to obtain a search warrant, and sent 11 agents and three lawyers to the Office of General Counsel to search its files.

I believe that, within the FBI, there are strong pressures to resist divulging information to outsiders.

Soon after I was appointed Special Counsel, my office realized that we would need a liaison with the FBI who would be the contact person for our investigation. Deputy Special Counsel Ed Dowd asked FBI Supervisor Special Agent John Roberts if he would be interested in this role, having been told by Postal Inspectors that Roberts had done an excellent job with the Ruby Ridge investigation. According to Dowd, Roberts didn't want to act as liaison, claiming that working with our office would hurt his career in the FBI.

Supervisor Special Agent Patrick Kiernan, a lawyer who teaches ethics at the FBI Academy, became our liaison, and did an excellent job. Kiernan has told me that he believes that people within the FBI have retaliated against him for assisting my investigation, and that he has filed the appropriate referrals with the FBI's Office of Professional Responsibility.

Whether or not the concerns of Roberts and Kiernan about their careers are well founded, the fact that they have those fears indicates to me that there is a culture within the FBI of noncooperation with inquiries from outside the Bureau and of protecting those within the Bureau from criticism.

People have suggested several ways to improve the FBI including the creation of an Office of Inspector General or a Blue Ribbon Commission. These may be good ideas. But my own belief is that the only way to correct a cultural problem is to change the culture.

This means that there must be a persistent message that the role of the FBI is to protect the country and the Constitution, not to protect the FBI from criticism, and that lack of candor and openness hurts the FBI and destroys public confidence as well.

It is a message that must come from the top: from the President, from the Attorney General and from the Director of the FBI. It must be heard on the first day a new agent arrives at the FBI Academy, and it must be repeated every day until retirement.

And because it is human nature for today's enthusiasms to become tomorrow's forgotten resolutions, it is important that Congress put in place a permanent system for overseeing the FBI.

And if there is an "old boys network" of FBI officials who create and enforce a closed culture within the Bureau, it is important to replace these people. Otherwise, any reform would be sure to founder on everyday resistance from within. I would not humiliate them. I'm sure they believe that what they are doing is for the best. But I would replace them. I would give them farewell parties and effusive thanks, and I would send them on their way.

Finally, it is important for all of us—Congress, the media, the public—to acknowledge our own responsibilities for the lack of openness we lament in government. When public officials fear that the disclosure of their mistakes would lead to personal humiliation and professional ruin, it is understandable if they prefer concealment to candor. By confusing the discovery of human error with the sensationalism of exposes, we help create a mentality in government where the first law is self-preservation.

If we really believe that making mistakes is not as bad as hiding mistakes, then it is our responsibility to keep that in mind and express it in words.

Chairman LEAHY. Thank you very much, Senator.
Mr. Fine.

**STATEMENT OF GLENN A. FINE, INSPECTOR GENERAL,
DEPARTMENT OF JUSTICE, WASHINGTON, D.C.**

Mr. FINE. Mr. Chairman, Senator Hatch, and Members of the Committee on the Judiciary, I appreciate the opportunity to appear before the Committee this afternoon to discuss the work of the Department of Justice's Office of the Inspector General, and in particular our oversight work in the FBI.

Let me begin by providing a brief overview of the structure and staffing of the OIG. The OIG was established by the Inspector General Act Amendments of 1988, a decade after inspector generals were created for many other Federal executive branch agencies. The OIG is an independent within the Department that, by statute, reports both to the Attorney General and to Congress.

The OIG has a staff of approximately 360 investigators, auditors, inspectors, program analysts, attorneys and support staff. The OIG investigates criminal and administrative misconduct by Department employees, and conducts independent audits and evaluations of Department programs and financial statements.

The OIG's jurisdiction to investigate misconduct in the Department is limited, however. When Congress created an Inspector General in the Department, it permitted the Department's Office of Professional Responsibility, known as DOJ OPR, as well as the

FBI's Office of Professional Responsibility and the DEA's Office of Professional Responsibility, to continue to exist outside of the OIG.

In 1994, an Attorney General order set out the respective authority of each office to investigate misconduct in the Department. In general, under this order, DOJ OPR has the authority to investigate misconduct of DOJ attorneys acting in their capacity to litigate, investigate, or provide legal advice. FBI OPR and DEA OPR have the authority to investigate allegations of misconduct by employees of their agencies. The OIG has the authority to investigate other allegations of misconduct throughout the Department and its components.

The OIG may only undertake investigations in the FBI and the DEA when the Attorney General or Deputy Attorney General specifically authorizes us to do so in a particular case. During the past several years, the OIG has received such authority to conduct a number of investigations in the FBI. My written statement provides a more detailed overview of these investigations, which includes the FBI's performance in uncovering the espionage activities of former CIA Officer Aldrich Ames and a review of allegations of improper and inadequate practices in the FBI Laboratory.

The Attorney General has recently assigned to the OIG two sensitive investigations relating to the FBI. The first concerns the alleged espionage activities of FBI employee Robert Hanssen. Shortly after the FBI Director announced Hanssen's arrest, the Senate Select Committee on Intelligence and the Attorney General asked the OIG to examine the Department's performance in the Hanssen case.

We have assembled a 10-person team of attorneys, special agents, analysts and support staff, several of whom worked on the OIG Ames review. Our review of the Hanssen matter will build on our already substantial base of knowledge about the FBI's performance in uncovering espionage during the period of Ames' spying, a period that overlapped in part with when Hanssen allegedly was supplying classified information to the Soviets.

In the Ames review, we produced a lengthy report describing deficiencies in the FBI's performance in determining the cause of the unprecedented and catastrophic losses suffered by both the CIA and the FBI in their Soviet intelligence programs. Our intention in the Hanssen investigation is to provide a similarly detailed report that thoroughly examines the FBI's performance in preventing, detecting and investigating Hanssen's alleged espionage.

The second matter we are currently investigating is the FBI's belated production of documents in the Oklahoma City bombing cases. On May 11, the Attorney General asked the OIG to investigate the circumstances surrounding this belated production of documents. We immediately assembled an investigative team of OIG employees, consisting of 5 attorneys, 2 special agents, 2 auditors, a paralegal and support personnel. The team is led by an experienced former Federal prosecutor who is the head of the OIG unit that conducts special investigations. As of this date, the team has requested and reviewed numerous FBI documents, and conducted more than 70 interviews of personnel from FBI headquarters, Main Justice, Oklahoma City, and 6 FBI field offices.

I do not believe it appropriate to discuss the evidence that OIG team is finding at this stage of the investigation. However, I can describe the scope of our review.

The OIG's investigation focuses on why the documents were produced late, the reasons for the delay, whether the FBI acted in a timely fashion upon learning that the documents had not been produced, and any systemic problems that this matter reveals about the FBI's handling of discoverable documents.

We have done a considerable amount of work in this investigation. However, we intend to conduct many more interviews. Although we do not intend to interview FBI personnel at all 56 FBI field offices, we intend to fully investigate a sample of FBI offices and survey others to determine what happened with the documents in those offices. We plan to issue a detailed report of our investigation as expeditiously as possible.

Finally, I want to note one important issue that the OIG has been struggling with over the past several years. The resources provided to the OIG have not kept pace with either our increasing responsibilities or the Department's explosive growth. In fact, due to budget constraints, the OIG's workforce has been cut by 100 employees within the past 2 years.

Resource limitations aside, however, the OIG has a proven track record of conducting high-quality, independent oversight of Department programs and operations. Moreover, on the limited number of occasions when we have received the authority, the OIG has produced comprehensive reports that have identified serious systemic weaknesses in FBI programs and provided constructive recommendations for improvement.

That concludes my oral statement, Mr. Chairman, and I would be pleased to answer any questions.

Chairman LEAHY. Thank you, and your full statement, of course, will be made part of the record.

Judge Webster.

**STATEMENT OF WILLIAM WEBSTER, SENIOR PARTNER,
MILBANK, TWEED, HADLEY AND MCCOY, LLP, WASHINGTON,
D.C.**

Judge WEBSTER. Thank you, Mr. Chairman. I am pleased to have an opportunity to be here this morning. I am not sure in which incarnation you wish me to speak.

I would like to clarify one thing that may be confusing. Senator Grassley referred to the Webster Commission. That was a commission established by this Congress to conduct a 2-year study on the advancement of Federal law enforcement. We made certain recommendations at that time. I agree with Senator Grassley that the issue of consolidation is probably not a good one to advance at this level of uncertainty, but I want to say only in respect to that that we did so because there are now 148 Federal agencies with law enforcement responsibilities.

We have gone in the Federalization of crime from half a dozen at the founding of our country to over 3,000 Federal crimes, including unlawful conduct at a rodeo. There are very important Federal crimes, but there are also a lot of—

Chairman LEAHY. Not a big issue in Vermont, I want to say.

Judge WEBSTER. I am sure it isn't, Mr. Chairman.

The FBI is now handling an inventory of 800,000 cases. It calls for the kind of look that we conducted and, of course, the kind of look that you are going to conduct.

I would like to take just a minute out of my time to reminisce briefly about the circumstances when I came to office 23 years ago. We were in the wake of the so-called "black bag" jobs, the Church Committee report, and other reviews of Federal law enforcement and intelligence community activities.

I was given 68 agents to consider disciplining as a result of those activities, discovering in the process that in the wake of the Supreme Court decision in 1972, not one single thing was done by the Bureau or the Department of Justice to educate the special agents as to the change in law in regard to the need for warrants in domestic security cases.

There was a lot of concern. When I was sworn in, President Carter took pains to say that he knew of no other organization that had as much impact upon public confidence in Government than the FBI, that when the FBI did well, people felt good about their Government. I think what was unwritten and unsaid at that point in time was that when it didn't feel good about the FBI, it didn't feel as good about its Government. It is important, I think, for management to understand that.

There were days of so-called plausible deniability, a new term I learned when I came to Washington. I said you have to understand there is no such thing in this agency as plausible deniability. Only the President of the United States may claim plausible deniability in international affairs, and you hurt the director when you do not tell him that you have a problem so that he can assist in dealing with it. I believe that to be true today.

I also remember that we will go through cycles in which two separate cries will seek dominance. One is leave us alone, don't interfere with our privacy, don't intrude. The other one is why don't you do something about all this crime and the threat of terrorism and other things. And it is the job of the Bureau to balance that, and I believe over time its record has been very good in that respect.

I might also say two other things that I used to say more times than people liked to hear that each of us carries the reputation of the other around in his pocket. It was something that people needed to be reminded of when they thought about doing things such as Senator Danforth described. It does not help the agency when people do not remember the proud record that it has and the importance of preserving it, and the reputations of the very gallant men and women who stand in our place every day of our lives.

Finally, one other thing and then I will proceed to what I think my role is today, and that is I think that the FBI has enjoyed a very objective disciplinary system and has never hesitated to discipline when disciplinary reasons were apparent.

On the investigative side, the facts are developed. The investigator, just as the FBI does in relation to the United States Attorney's office, does not prosecute. He turns the matter over to the Office of Professional Responsibility, which then makes recommendations based upon an effort to be a consistent pattern of discipline.

So I think you will find, regardless of what direction you go in respect to future oversight, that the FBI has not shrunk from dealing with issues of discipline; in fact, wish to have it.

I see I have pushed the light too far for my own good.

Chairman LEAHY. Take whatever time you need.

Judge WEBSTER. Thank you. I would like to tell you a little bit about I have been asked to do by the Attorney General and Director Freeh, and that is to look into the internal security procedures of the Federal Bureau of Investigation in the wake of the Robert Hanssen case.

I might say that Inspector General Fine and I have met on two occasions to make sure that we were cooperating and not working against each other and would appropriately share information that would be helpful to you and to their own responsibilities.

I define our mission in this shorthand way. We are not investigating the Hanssen case. We will learn, we will be informed by what we get from the inspector general and from other sources. But our mission, I think, is to reduce the time between defection and detection. It is that simple.

No one should be allowed to function as a traitor in the Federal Bureau of Investigation, much less anywhere else, for 15 years. The problem everyone understands is that we can't preclude someone turning sour in the midst of his career, but we can make every effort to be sure that we recognize that change of attitude and purpose, and do so in the best possible way without destroying the morale and the trust and the bond that exists within the FBI. The FBI has accepted, for example, in drug testing intrusions on privacy interests for the greater good, the example to be set, and so on. We are looking at that and we are looking to see how it would be done.

Well, what have we done and where are we? I have established a very excellent staff to tackle and break down the assignments, and I would like to just list those to you, but also not only mindful of the fact that a former director of the FBI has been asked to head this commission—incidentally, Director Freeh asked me to take this on even before he made the arrest of Robert Hanssen, subject to the approval of the Attorney General which came immediately afterwards.

I have asked as an oversight commission—I don't want to engage them in all the work that is involved, but to look at what we are doing, to look at what I am doing and to tell me where we ought to be doing things differently, or more or less, and to assess our judgments.

I have asked, and they have agreed to serve, former Secretary of Defense and Minority head of the Senate Intelligence Committee, William Cohen; former Secretary of the Army Clifford Alexander; former Speaker of the House Thomas Foley; former Trade Representative and a very distinguished public official, Carla Hills; Robert Fisk, former special prosecutor in New York; and former Attorney General Griffin Bell. I hope that they will insist on the level of credibility that will convince you that whatever we are able to come up with is worth listening to.

Now, we have divided our task into four basic areas. Personnel security. We have a task force working on key issues, including the

use of the polygraph, the adequacy of background investigations and how seriously they are taken, and means of indicia of defection.

We have a task force on document security which will address and is addressing the collection, control, dissemination and destruction of classified information, particularly SCI and FISA information, and the adequacy of "need to know" assessments. I might add that we were immediately given a package of all of the known rules and regulations in this area by the FBI upon my appointment.

Third, organizational security. We are undertaking a comparison of security policies and practices in various other agencies, the FBI and the other intelligence community activities, to see what can be learned elsewhere, and the security, training and education areas.

And, fourth, we have a task force on information systems security, and that was specifically mentioned by the Attorney General. We are looking at the adequacy of security protections for classified computer and telecommunications systems. We are looking at the adequacy of the audit trail capabilities, the implementation of automated trip wires, the detection methods, ways that we can have electronic librarians that will recognize when someone who doesn't belong in a particularly highly classified area is walking around.

I have a staff now of approximately nine attorneys, headed by Michael Shaheen, a distinguished former head of the Office of Professional Responsibility at the Department of Justice. Most of our staff members are assigned and seconded to us from other agencies of Government.

I have also asked Russell Bremer, and he has been working with me. He was a former general counsel at the CIA. He worked with me at the FBI on the 68 agent cases, and I have asked him to assume major responsibility on the polygraph issues and the use of polygraph as a vetting process, which prior to the Robert Hanssen case did not exist, except on an entry-level basis.

I could list all of them. They are absolutely outstanding, and we have some 17 investigators, experts and consultants from other agencies of the Government and the military.

We have made a good deal of progress. We have conducted many interviews. We have been meeting with the other agencies and with officials in the FBI, including Neil Gallagher, who heads the National Security Division. We have been coordinating, as I said, with Inspector General Fine. We have coordinated with the Hanssen prosecution team in order not to step on their work and thereby create issues of privilege, and so forth.

We have briefed the Attorney General and the Deputy Attorney General, and we have tried to work out and are working out the problems that come from having the application of FACA, the Federal Advisory Committee Act, and its implications for us so that we can have our closed meetings and deal with highly classified information.

Chairman LEAHY. I think as you said, Judge Webster, nobody is shocked to find that the Russians or any other group, including some friendly to us, may try to get somebody to defect or to spy for them or provide material. What has been shocking to this Committee—and a number of members of this Committee also serve on the Intelligence Committee—what is shocking is why it took so

long to detect them. We will be very anxious to see what you come up with on that.

We will, of course, continue to ask questions here and try not to bump into what you are doing. I am not trying to witch-hunt in the Bureau, but I am just trying to make sure that we don't have another situation like this. If somebody is leaving, as the press has reported, warning signals all over the place and doesn't get caught, I worry what we are doing about catching somebody who shows a little bit more finesse.

Judge WEBSTER. Well, we have one here. We have what I call a 500-year flood, and we will learn from that.

Chairman LEAHY. I hope so.

Judge WEBSTER. I think it would be naive to assume that we will never have another defection.

Chairman LEAHY. Of course, we will have more, but we can have better—

Judge WEBSTER. We can be prepared.

Chairman LEAHY. Yes. Thank you.

Mr. Bromwich.

STATEMENT OF MICHAEL R. BROMWICH, FORMER INSPECTOR GENERAL, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. BROMWICH. Thank you, Mr. Chairman, Senator Hatch, members of the Committee. I am currently partner in the Washington, D.C., and New York offices of the law firm of Fried, Frank, Harris, Shriver and Jacobson. Before joining the firm in 1999, I had spent 13 of the previous 17 years in public service, first as a Federal prosecutor in both New York and Washington, and for the last 5 years, from 1994 to 1999, as the Inspector General for the Department of Justice.

While I was Inspector General, the office conducted a number of significant reviews of the FBI, including in-depth investigations of the FBI Laboratory, the FBI's role in the Aldrich Ames affair, and the FBI's problems in handling classified information during the campaign finance investigation. I welcome the opportunity to be here today to testify about the important and very timely subject of oversight of the FBI.

My prepared testimony reviews in some detail the history of the past decade relating to FBI oversight and some of the challenges and frustrations we at the OIG faced during my tenure. I am submitting that statement for the record. In this brief statement, I will focus on the theme of this hearing, which is restoring confidence in the FBI.

These last several months, as has been noted by many of the members, have been extremely difficult ones for the FBI and for those who care about public confidence in it. In the past month, we have heard about an FBI that is allegedly out of control, fails to respect the rights of criminal suspects and defendants, and is characterized by a cowboy culture more concerned with newspaper headlines than justice. Recent polls have demonstrated that, and the damage to the Bureau's reputation.

I think that the "out of control" rhetoric and suggestions about its culture are overstated, and in any event are not very helpful in understanding the dimensions of the problems or in arriving at so-

lutions. For the most part, the men and women of the FBI have chosen careers of public service and committed themselves to the noble calling of Federal law enforcement. They do their jobs and they do them well, but the problems cannot be ignored or dismissed.

I share with this Committee the view that one of the principal means for restoring confidence in the FBI is to ensure that it is subject to adequate oversight. I believe the principal tool for upgrading the amount and quality of oversight over the FBI is to strengthen the Justice Department's Office of the Inspector General.

At present, its ability to perform comprehensive and aggressive oversight is limited by jurisdictional limitations and resource shortfalls. The Justice Department may not, at his own initiative, conduct investigations of misconduct among personnel at the FBI without the permission of the Attorney General or the Deputy Attorney General.

I am aware of no similar limitation that exists for any other IG. This means that the FBI, arguably the most powerful agency in the Federal Government, is currently subject to less oversight than any other agency. A bill in the House to change that system in 1997, following the OIG's FBI Lab and Ames reports, died, and Attorney General Reno would not change the situation herself.

Although my prepared testimony explains the genesis of the limitation on the OIG's jurisdiction in historical and institutional terms, it makes no sense any longer, assuming it ever did. Lifting the existing jurisdictional limitations will not cause the Justice's OIG to insert itself into sensitive intelligence and law enforcement activities.

The concerns about interfering with the ability of the FBI to carry out its critical law enforcement and counterintelligence responsibilities are overblown. The IG Act already gives the Attorney General the authority to block any IG investigation or audit if he or she determines that the activity will interfere with an important function or activity. To my knowledge, that provision has been used only once, when Attorney General Reno and I had an honest disagreement about the relative importance of the OIG's crack cocaine report, on the one hand, and an ongoing narcotics investigation on the other.

So the mechanism exists currently to block the OIG from taking specific actions, but there is accountability built into the system because Congress must be notified of the Attorney General's action. It does not happen under a cloak of secrecy.

The more important issue is ensuring that the Justice OIG has the resources necessary to do its job. Authority without the resources is a ticket to frustration and failure. The OIG never possessed the resources necessary to meet its responsibilities during my tenure, and its current condition is far worse, after the substantial cutbacks over the past 3 years. Congress obviously has the power and should seize the opportunity to remedy this serious deficiency. It is time for Congress to restore the strength of an agency that has been weakened in an arbitrary and irrational way.

Addressing the problem of insufficient oversight over the FBI, two distinguished members of the Senate and this Committee, Sen-

ators Specter and Durbin, have proposed creating a separate IG for the FBI. The strength of such a proposal is that it recognizes the problem and suggests an institutional mechanism, presumably backed with sufficient funding. But I believe that it reaches, respectfully, the wrong conclusion.

One problem is that it reinforces the separateness of the FBI. Among the problems we have seen in recent years, in my judgment, is an FBI that at times has been only nominally part of the Justice Department. While such a strategy may have been useful to the Bureau in some respects, it is fundamentally inconsistent with the appropriate role of the FBI and counter to its long-term interests. The creation of a separate IG for the FBI underscores its separateness and thus, in my judgment, moves in the wrong direction.

Second, I doubt the creation of an FBI IG would address the crisis in public confidence that currently affects the FBI. Seven or 8 years ago, it was sometimes very difficult to persuade people that the Justice Department IG was sufficiently independent to perform aggressive oversight over all aspects of the Department, including the FBI.

Over time, it earned legitimacy and credibility because of specific examples of oversight, including the investigations of the FBI mentioned earlier in my testimony. That same legitimacy would be much harder for an FBI IG to claim because it would have to start from scratch and it would reside within the FBI.

Third, the creation of a separate IG for the FBI risks further confusing the already confused institutional configuration relating to FBI oversight. There also would be the practical and logistical difficulties of creating a brand new institution. Where would the personnel come from, from within the FBI? If so, how can Congress and the public be assured of its independence? If from the outside, it will take months, if not years, for skilled and experienced personnel equal to the task to be hired. We cannot wait that long.

And what would happen when, as is frequently the case, the specified piece of oversight requires the examination of not simply FBI personnel, but also the actions of prosecutors or other Justice Department personnel with whom the FBI personnel work? Presumably, a joint effort of the FBI IG and the Justice Department IG would be required. This adds coordination problems on top of investigations that are already substantively complex and difficult.

In short, I agree with the impulse behind the proposal to create a separate IG for the FBI; that is, to enhance the level of oversight over the FBI. But I believe the fuller and more prompt realization of those objectives can be achieved through full funding of the Justice Department's OIG and through eliminating the current restrictions on that office's ability to perform oversight.

Chairman LEAHY. What you are saying, in effect, is if there is going to be a Justice Department IG, the IG should be for everybody in the Justice Department.

Mr. BROMWICH. That is exactly right, Mr. Chairman.

Chairman LEAHY. And everybody in the Justice Department should be treated the same, and that includes the FBI.

Mr. BROMWICH. That is exactly right.

Chairman LEAHY. Thank you.

Mr. BROMWICH. Just finishing up, in the process of doing the FBI Lab investigation, we learned that the FBI had long resisted opening itself to the entity responsible for accrediting crime labs throughout North America. In discussing this with the forensic scientists who were members of our investigative team, I learned unfortunately that this was part for the course.

They told me that in the exchanges between personnel from the FBI Lab and from other labs, the FBI was there to impart knowledge and wisdom rather than to receive it, and the FBI did not act as though it had anything to learn from others. That attitude—some describe it as institutional arrogance—has deprived the FBI, of lessons to be gained from mutual exchanges with other law enforcement agencies and other large and complex organizations.

The backwardness of the FBI's computer systems and record-keeping practices are at least in part the product of resisting the advances in technology that swept through the rest of the organizational world some time ago. Although mutual exchanges with other institutions may not generally be regarded as a form of oversight, the FBI can benefit immeasurably from opening itself to outstanding influences of various kinds. This would reflect a humility and a willingness to learn from others that the Bureau has too often seemed to lack. Opening itself up will help the Bureau to overcome its debilitating insularity and embrace the outside world in a constructive manner.

Mr. Chairman, that concludes my prepared testimony. I would be happy to answer any questions.

[The prepared statement of Mr. Bromwich follows:]

STATEMENT OF MICHAEL R. BROMWICH, FORMER INSPECTOR GENERAL, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. Chairman, Senator Hatch, members of the Committee:

I am currently a partner in the Washington D. C. and New York offices of the law firm of Fried, Frank, Harris, Shriver & Jacobson. Before joining the firm in September 1999, I spent 13 of the previous 17 years in public service, first as a federal prosecutor in New York and Washington, and for the last five years, from 1994 to 1999, as the Inspector General (IG) of the Department of Justice. During the time I served as Inspector General, the Office of the Inspector General (OIG) conducted a number of significant reviews of the FBI, including in-depth investigations of the FBI Laboratory, the FBI's role in the Aldrich Ames affair, and the FBI's problems in handling classified information in the campaign finance investigation. I am pleased to be here to testify about the important and timely subject of oversight over the FBI.

I think it might be most useful for me to address some of the recent historical issues relating to FBI oversight. First, I will describe the state of oversight over the FBI and the institutional configuration relating to such oversight when I arrived at the Department at the end of 1993. Second, I will describe the experiences - the challenges and frustrations - I experienced during my five-year tenure as IG as they relate to FBI oversight. Third, I will describe what I view as the central oversight issues that need to be considered by this Committee, including the recent proposal to create a new and separate inspector general within the FBI. I should add that my review of the events described in this statement is based on my best recollection rather than on any comprehensive review of the relevant documents.

I. BACKGROUND

The Inspector General Act of 1978 (IG Act) established inspectors general in cabinet level agencies and many independent agencies, accelerating a movement to create independent audit, program evaluation, and investigative agencies in the executive branch and continuing a trend that had begun in the early 1970s. A number of agencies, including the Treasury and Justice Departments, were not included in the 1978 law. Although there were multiple reasons for the omission of the Justice

Department from the scope of the original Inspector General Act, the principal arguments were that the Justice Department already had an internal affairs-type entity the Office of Professional Responsibility (OPR), which had been established by Attorney General Levi in the mid-1970s—and that there were separation of powers-related concerns about putting an independent inspector general, with reporting responsibilities to the Congress, in the department headed by the Attorney General (AG), the nation's chief law enforcement officer. For these reasons and others, the Justice Department OIG was not created until 1988, when Congress passed the Inspector General Act Amendments of 1988.

The Justice OIG was set up through the consolidation and amalgamation of elements of the Justice Department, including units and personnel drawn from the DEA, the Marshals Service, the Immigration and Naturalization Service (INS), the Bureau of Prisons, and the Justice Management Division. The Justice Department OIG opened its doors in the spring of 1989 with an acting inspector general. The Senate confirmed the first Justice Department inspector general in the latter part of 1990.

The legislation that created the OIG provided it with audit and program review authority that was virtually unlimited, including over the FBI. In practice, as I learned when I arrived, the FBI made life both difficult and unpleasant for OIG personnel engaged in work involving the FBI. Because doing work in the FBI was so timeconsuming and frustrating, because there was a general lack of cooperation from FBI personnel, and because OIG personnel were more knowledgeable about other components of the Department than about the FBI, the OIG did fewer audits and less program evaluation work in the FBI than I would have liked. OIG professionals turned their attention to parts of the Justice Department where they could do their jobs more effectively and have something to show for it.

As to investigations, the scope of the OIG's investigative authority over FBI personnel and DEA personnel was controversial and confusing almost from the outset. In addition to the OIG and OPR, there were the two other internal affairs arms in the FBI and DEA—FBI-OPR and DEA-OPR—whose existence was left undisturbed by the statute and by the creation of the OIG. The statute suggested a particular division of responsibilities, although the combination of the statute and the legislative history made clear that the Attorney General retained substantial discretion in allocating matters within this institutional hodgepodge. Because the statute made the scope of the OIG's investigative jurisdiction uncertain, there was need for some form of clarification. In 1992, the Deputy Attorney General issued an order to clarify matters. The order, known as the Terwilliger Order, generally gave the jurisdiction over attorneys and law enforcement personnel to the Justice Department's OPR, even though it lacked the manpower to do a credible job in that regard. This did nothing to solve the problem, but it served to diminish the stature of the OIG within the Justice Department.

One factor in this early history that helps explain the failure to provide any investigative oversight over the FBI was the general hostility of the Department, including the FBI, towards the creation of the OIG and the seeming desire to marginalize it. This was reflected in what I found when I arrived at the Department in late 1993—that the OIG had not been fully accepted by the rest of the Department in the first four years of its existence. This was not attributable to any deficiencies on the part of the OIG but, instead, was the result of what appeared to be an attempt to marginalize it. Nor was the notion taken seriously that the OIG could conduct investigations into significant matters involving complex law enforcement and national security issues.

When the possibility of my becoming the Justice Department's Inspector General was initially raised with me, the then-Deputy Attorney General stressed his concern about the ability of the Department to conduct major, credible internal investigations into matters of substantial significance. The initial investigations into Ruby Ridge and Waco had been completed, and both he and the Attorney General appeared to be dissatisfied with the *ad hoc* methods and mechanisms used to conduct these inquiries. One of my mandates was to create a credible investigative vehicle within the OIG.

When the Deputy Attorney and Attorney General originally recruited me to become the Inspector General, in mid-1993, it was on the understanding that the OIG and OPR were to be merged. However, before Attorney General Reno could make a decision on the merger that had been proposed by the Deputy, members of this Committee made clear that it would not move ahead with my confirmation if the merger went forward. In that context, Attorney General Reno declined to approve the merger. I was confirmed as IG in June 1994.

II. FBI OVERSIGHT FROM 1994–1999

One of the first issues that needed to be addressed, once I became IG, was to clarify the respective jurisdictions of the various internal affairs offices. The process, which took several months, culminated in the Attorney General's jurisdictional order, signed by Attorney General Reno, in November 1994. The main issue to be resolved was determining which cases would be worked by the Justice Department's OPR and which by the OIG. Providing the OIG with meaningful investigative oversight over the FBI and DEA did not figure as a matter of serious debate; it was clear that the FBI and DEA opposed it and that the Department's leadership was not willing to impose it. Sorting out the jurisdictional boundaries between the OIG and the Justice Department's OPR was a more pressing and practical issue.

Attorney General Reno's jurisdictional order established that the Justice Department's OPR was responsible for investigating allegations against lawyers prosecutors and others—acting in their capacity as lawyers. This established OPR's core function as its sole function—investigating allegations against lawyers, such as grand jury abuse, abuse of the discovery process, other alleged unethical conduct in the course of litigation and in trials, and similar types of matters. The FBI and DEA internal OPRs were accorded primary responsibility for investigating allegations of misconduct against personnel in their respective agencies. The OIG was responsible for investigating everything else, which was a substantial expansion of its previous investigative jurisdiction. The jurisdictional order provided that the OIG could conduct an investigation of FBI or DEA personnel only with the consent of the Attorney General or the Deputy Attorney General.

In the absence of such consent, the OIG had no authority to conduct investigations as opposed to audits or program reviews—in the FBI or DEA. This imposed a limitation on the jurisdiction of the OIG that, to the best of my knowledge, did not exist with respect to any other inspector general in the federal government. This privileged and protected status reflected the FBI's clout within the Justice Department—DEA always appeared to be a free rider in these discussions, benefiting from the special protection the FBI sought for itself—and served to limit the scope of the OIG's oversight over the FBI.¹ It became clear to me that, in order to expand the OIG's oversight jurisdiction over the FBI, we would have to first demonstrate our ability to do investigations of complex law enforcement and intelligence matters.

A. AMES

In November 1994, the House Permanent Select Committee on Intelligence (HPSCI) filed a report of its inquiry into the Aldrich Ames affair. One of its recommendations was that the OIG conduct an inquiry into the FBI's role in the affair analogous to the review previously conducted by the CIA OIG. As we sought to assemble a team to conduct the investigation, we learned that the FBI was trying to convince the chairman of HPSCI and the top staff members to permit the FBI to review its own conduct, foreclosing the OIG's review. The FBI told staffers that I was uninterested in conducting the review, and was unable to do so, and was close to reaching an agreement with the Committee that would have permitted the FBI to review its own conduct. The staffers appeared shocked when they learned that the FBI had wholly misrepresented my attitude towards conducting the review. Our belated discovery of the FBI's attempts to block the OIG's review and discussions with the HPSCI staff served to get the project back on track.

Ultimately, we produced a detailed account of the FBI's efforts over a seven-year period to determine the source of the enormous intelligence losses caused by Ames. Once the FBI reconciled itself to the fact that the OIG would be doing the review, we generally got good cooperation from the FBI in providing personnel to assist with the project, in producing documents, and in making witnesses available. I have little doubt that we were able to bring a degree of independence and objectivity to the review that would have been beyond the capacity of any review conducted by the FBI itself. Although the head of the Bureau's National Security Division publicly dismissed the report upon its release as containing nothing new and nothing that

¹ The jurisdictional order required the FBI-OPR and DEA-OPR to provide information on its misconduct investigations to the OIG on a regular basis to enable the OIG to make informed decisions on whether to request authority to investigate specific matters. No such reporting took place until this Committee conducted hearings into the Ruby Ridge matter and inquired about the compliance of the FBI and DEA with the reporting provisions of the jurisdictional order. Almost immediately, the Deputy Attorney General ordered the FBI and DEA to comply with the terms of the order and information began to be supplied. Although the quality of the information originally provided left much to be desired, the FBI and DEA worked over time to supply the necessary information in a usable and understandable format.

the FBI had not already figured out on its own, we were subsequently told by Congressional staffers that the report's recommendations had been extremely useful in monitoring the Bureau's progress in addressing some of the deficiencies that had been noted. And, when the alleged activities of Robert Hanssen were reported earlier this year, the Bureau publicly stated that it had implemented the recommendations contained in that 1997 report.

B. FBI LAB

Probably the most well-known example of investigative oversight we conducted during my tenure as IG was our investigation of the FBI Laboratory. After conducting a preliminary inquiry into allegations of misconduct and shoddy and unscientific work in the FBI Laboratory, we expanded the review into a full-scale investigation in the fall of 1995. At the time, FBI-OPR was handling some of the allegations made by a scientist within the FBI Lab, and the OIG was handling others. When some of the allegations became public, it became clear that the credibility of the investigative results turned on their being done by an entity outside the FBI. For this reason, I went to the Deputy Attorney General and sought, under the jurisdictional order, to assume responsibility for reviewing the allegations then being reviewed by FBI-OPR. The Deputy Attorney General asked that I meet with the FBI Director to see whether he objected to our assuming total responsibility. I did so in early August 1995, and Director Freeh raised no objection.

After an eighteen-month long investigation, we issued a lengthy report in April 1997 supporting many of the allegations of poor scientific practices and substandard work being performed in the three sections of the Lab we examined closely. We rejected some of the most far-reaching allegations that had been made, including allegations of perjury, obstruction of justice, and suppression of exculpatory evidence. We made 40 recommendations, all of which were accepted by the FBI. In addition, during the course of our review, we strongly recommended that a world-class scientist be named to head the Lab rather than an agent, as had been the case previously, and as the Bureau was intending to do again. Following the intervention of the Attorney General, the Bureau conducted an extensive search and appointed a well-known and highly-respected scientist to head the Lab.

C. CAMPAIGN FINANCE INVESTIGATION

In September 1997, it was disclosed that the FBI Director and the Attorney General had not been properly briefed on classified information collected by the FBI that suggested involvement of the Chinese government in the 1996 presidential election. The AG and the FBI Director turned to the FBI initially to examine the problem; the OIG was not consulted. At the end of November 1997, the AG learned of additional problems of the same kind. At that point, she advised the FBI that she was asking us to investigate the matter; she did so over the Director's objections.

In July 1999, the OIG issued a highly classified report and an unclassified executive summary containing its findings and recommendations. The findings and recommendations included both matters relating specifically to the structure and function of the campaign finance investigation and relating to more general systemic problems. In the category of systemic problems, the investigation found major defects with the manner in which the FBI's computer systems were used. Most of these were management and operational problems, rather than purely technical issues. For example, the investigation found that agents had too much discretion in entering investigative information, thus risking the failure to enter significant data into the system; that agents and other personnel using the computer systems were insufficiently trained in using the systems properly; and that, as a result, the ability to retrieve relevant information was significantly impaired. We have apparently seen some of the bitter fruits of these computer system management problems in the McVei documents matter, although we need to await the results of the current Inspector General's investigation to determine how much of the explanation is attributable to computer problems and how much to other factors.

D. OTHER MATTERS

In addition to the matters summarized above, there were other FBI oversight matters that arose during my tenure that raised questions about the appropriate body to perform the oversight. In connection with allegations relating to the Ruby Ridge matter, the allegations against high-ranking executives at the FBI were sent to the Justice Department's OPR, rather than to the OIG. OPR began its review without the OIG's knowledge, even though the OIG was better equipped, in my judgment, to conduct the investigation because it has its own complement of law enforcement personnel and therefore does not need to rely entirely on assistance from

the FBI, as has been the case with OPR. When the issue was raised with top Department management, they said it was too late to unscramble the egg. The same general sequence explained OPR's role in the Richard Jewell matter.

Arguably, both of these matters were within the jurisdiction of FBI-OPR because the allegations were focused on FBI personnel. And, arguably, FBI-OPR was prudent in calling for assistance. The institutional problem was that Justice's OPR had long been considered by people in the Department and the FBI as having something other than an arm's length relationship with the FBI. In part, this has been because, on matters of major significance, including those matters involving investigations of FBI personnel, OPR has tended to rely heavily on FBI personnel to provide investigative support because it lacks its own staff of non-lawyer investigators. On matters of such great importance, in order to ensure public confidence in the oversight of the FBI, and the confidence of FBI personnel themselves in the independence and objectivity of the review, the oversight needs to be performed by an entity that is not closely identified with the FBI.

Two other matters that arose during my tenure are worth noting, in which the jurisdictional restrictions on the OIG resulted in important oversight over the FBI being conducted by other entities. In the summer of 1997, allegations arose about FBI misconduct in the context of a major organized crime case in Boston. These allegations included the alleged willingness of FBI agents to permit organized crime figures, because of their status as FBI informants, to commit murder and other crimes of violence against other persons involved in organized crime activities. I approached the then-acting Deputy Attorney General about allowing the OIG to assume responsibility for the review. The request was denied.

Second, in the spring of 1999, the Wen Ho Lee case had begun to collapse and there were calls from Congress and the media for a full internal investigation of the activities of both FBI personnel and Justice Department lawyers. At the time, the OIG was struggling with major budget problems. Even so, I went to the Deputy Attorney General and requested that the OIG conduct the review. For reasons that were not fully explained, the Deputy said that the OIG had not been considered for conducting the review. Ultimately, we were advised that, because of the budget problems the OIG was experiencing at the time, we were thought not to be capable of undertaking the review. That decision had been made without any consultation with us whatsoever. Although the Department asked a very capable and competent prosecutor to conduct the review, that is beside the point. As an institutional and oversight matter, it turned back the clock to the *ad hoc* world of 1992-93, where oversight solutions were developed on the fly with little regard for establishing continuity and stability in the oversight of the FBI.

E. RESOURCE ISSUES

Oversight requires resources—both the right people and sufficient funding. During my tenure, our attempts to change the mix of personnel to conduct more complex pieces of oversight over the FBI ran aground because of lack of funding.

My experience has been that the type of oversight reflected in the FBI Lab, Ames, and campaign finance oversight investigation requires a mix of lawyers, investigators, and other personnel. When I arrived at the OIG, it was ill equipped to conduct such oversight. Of the approximately 400 people on board at the time, there were only a handful of lawyers, none of whom had any prosecutorial or investigative experience. In fact, the current Inspector General, Mr. Fine, was the first lawyer I hired specifically to do this kind of complex oversight work. My efforts over the years to build up this capability in any substantial way were only partly successful; even after the reports on the Ames and FBI Lab matters were completed in early 1997, I was unable to get the Attorney General and Deputy Attorney General to approve enhanced funding for this purpose. Their approach was to try to get us to enlist personnel detailed from other parts of the Department, most notably the U.S. Attorney's Offices and the Criminal Division, rather than augment the OIG's funding. Sometimes this solution worked well; sometimes it did not. In any event, I did not view it then—and I do not view it now—as a sustainable solution over the long term. The OIG needs to have its own personnel available to conduct oversight of complex matters. To date, because of budgetary issues, caused during my tenure by the failure of the Justice Department, OMB, and the Congress to provide adequate funding, this has not been the case. We were able to build up this capability to some extent, but not nearly to the extent that the workload required.

This general long-term structural and funding problem took a more ominous turn starting in the second half of 1998. At that time, staffers on the Senate Appropriations Subcommittee suddenly, and without any warning, took strong exception to a funding mechanism that had been used continuously since 1992. They were able to

do so without any evident concern for the impact their actions would have on the oversight capacities of the OIG, much less on the personnel within the organization. I was never able to determine the real motivation for the attacks on the OIG, but the bitter and unfortunate result was a substantial degradation in the ability of the OIG to conduct oversight over the FBI and the rest of the Department. For the better part of my last year as IG, the energies of top management in the OIG were heavily devoted to staving off draconian budget cuts, rather than focusing exclusively on the OIG's oversight function. At one time, the OIG was threatened with budget cuts that would have resulted in close to a 50% cut in personnel. Although the worst cuts were avoided, the damage to the OIG was severe. The OIG is still dealing with the debilitating effects of that episode.

III. RESTORING CONFIDENCE IN THE FBI THROUGH STRONGER OVERSIGHT

These last several months have been extremely difficult for the FBI and for those who care about public confidence in the FBI. This should include all of us. When it was disclosed just over a month ago that thousands of pages of documents generated in the Oklahoma City bombing investigation had not previously been provided to prosecutors and defense counsel, it was simply the most recent in a string of major embarrassments for the FBI. The failure to produce the documents in the *McVeigh* case, just days before his scheduled execution, was only the most recent setback for the Bureau, adding to a list that, since the beginning of this year alone, includes the following: disclosures of the 15–20-year-long espionage activities of Robert Hanssen; the failure to disclose tape recordings in the Birmingham church bombing case to the Alabama state attorney general; and the Boston man wrongfully imprisoned for 30 years because FBI agents were apparently more interested in protecting an informant than in freeing an innocent man.

In the past month, we have heard about an FBI that is allegedly out of control, fails to respect the rights of criminal suspects and defendants, and is characterized by a “cowboy culture” more concerned with newspaper headlines than justice. Recent polls have demonstrated that the FBI's public reputation has been seriously damaged: for example, a Washington Post/ABC poll published shortly after the disclosure relating to the *McVeigh* documents showed that a bare majority of the American public—53% said it has a favorable impression of the FBI, down 30 points from six years ago. I think the “out of control” rhetoric and suggestions that the FBI is characterized by a “cowboy culture” are overstated and in any event may not be very helpful in understanding the dimensions of the problems or in arriving at solutions. But the problems cannot be ignored or dismissed.

If there is any unifying theme to these failures, it appears to be a failure of basic supervision, management, and oversight. For example, the *McVeigh* document debacle seems to have been a combined failure of computer systems and inadequate management attention, at the headquarters and field office level, to the fundamental task of collecting and retrieving investigative materials. The failure to detect and limit the alleged Hanssen spying spree appears to be a combination of inadequate internal controls on access to highly classified information and the failure adequately to screen and monitor FBI personnel. Definitive judgments on these matters, as well as the others, will have to await the investigations now in process, but, in the meantime, the FBI will have to push ahead and address its various management and organizational challenges.

A. CHOICE OF A NEW DIRECTOR

With Director Freeh having announced his intention to resign as Director, and expected to leave office shortly, President Bush has the important task of choosing his successor. President Bush need not—and in my view probably should not—adhere to the recent model of selecting the new director from the federal judiciary. Indeed, the kind of managerial experience and expertise most needed at the FBI is unlikely to be found there. It is, of course, vital that the next FBI Director, like Judge Webster, be a person whose personal and professional ethics are beyond reproach. But that is not enough to ensure that the FBI Director will be able to address adequately the substantial management and organizational challenges he or she will face and the critical task of rebuilding the Bureau's morale, which is at a low ebb.

It is, however, critical that the principle embodied in the selection of federal judges be followed: the selection must avoid even the suggestion of partisanship. The next director should be selected—and the Senate should exercise its advise and consent function—based on whether the nominee has the right mix of law enforcement and managerial experience to handle the complex challenges of the FBI. The FBI does not need a super cop at its helm, nor can it easily absorb someone who has been selected for reasons other than his or her law enforcement and manage-

ment credentials. And, the nominee needs to understand and accept the legitimacy of external oversight—both Congressional oversight and executive branch oversight.

B. PROPOSAL FOR A SEPARATE FBI IG

There is general agreement that the FBI needs stronger oversight and that the current system of oversight, which places primary responsibility on FBI-OPR, as well as on the Inspections Division of the FBI, has not been adequate. Addressing this problem, two distinguished members of this Committee—Senators Specter and Durbin—have proposed creating a separate IG for the FBI in order to create an institution specifically devoted to FBI oversight. The strength of such a proposal is that it recognizes the problem and suggests an institutional mechanism—presumably backed with the promise of sufficient funding. But I believe that it reaches the wrong institutional conclusion.

Among the problems we have seen in recent years, in my judgment, is an FBI that at times has been only nominally part of the Justice Department. While such a strategy may well have won larger budgets for the FBI, it is fundamentally inconsistent with the appropriate role of the FBI, and counter to its long-term interests. The creation of a separate IG for the FBI that underscores its separateness moves in the wrong direction. For most of our history, concerns about the FBI's becoming a national police force have been countered by the assurance that it is under the control of the Justice Department and the Attorney General. A separate FBI IG who reports jointly to the FBI Director and the Congress, rather than to the Attorney General, would undermine the principle that the FBI is apart of the Justice Department.

Second, I doubt the creation of an FBI IG would address the crisis in public confidence that currently affects the FBI. As difficult as it sometimes has been to persuade people that the Justice Department IG is sufficiently independent to perform aggressive oversight over all aspects of the Department, including the FBI, it has earned legitimacy and credibility over the twelve years of its existence with specific pieces of oversight, including the investigations of the FBI described earlier in my testimony. That same legitimacy would be much harder for an FBI IG to claim because it would reside within the FBI and the IG would report to the FBI Director as well as Congress, rather than to the Attorney General. Nor would having the FBI IG report to the Attorney General solve this problem.

Third, the models for the proposal, I believe, are the CIA OIG and the OIG for Tax Administration, which, I believe, is the only other IG created within an agency where an IG already exists. Both cases are very different from the situation facing Congress in dealing with the FBI and, therefore, do not constitute a persuasive precedent for creating a separate IG for the FBI. The creation of a statutory IG at the CIA was designed to strengthen the oversight at that agency and give the IG recourse to Congress if CIA management failed to address significant issues. Before the creation of the IG, there was no other independent oversight mechanism, such as exists within the Justice Department's OIG, to perform such oversight. The non-statutory CIA IG was considered to be without significant clout and was not taken seriously within the Agency.

In the case of the IG for Tax Administration, it was created in an environment in which the Treasury IG had exercised no meaningful oversight over the IRS and shown neither the interest nor the ability to do so. Indeed, to be blunt, the Treasury OIG at that time was a largely dysfunctional agency that had shown little or no ability to carry out its oversight functions over the law enforcement components of the Treasury—Customs, ATF, and the Secret Service—and whose IG was ultimately investigated by the Permanent Subcommittee on Investigations and left office under a cloud.

In short, I do not believe that the experience of either the CIA IG or the Tax Administration IG supports the creation of a separate FBI IG. Moreover, the creation of yet another institutional entity responsible for FBI oversight risks heightening the institutional confusion that already exists over which agencies have what FBI oversight responsibilities. There also would be the practical and logistical difficulties of creating an institution from scratch. Where would the personnel come from? From within the FBI? If so, how can Congress and the public be assured of its independence? If from the outside, it will take months if not years for skilled and experienced personnel equal to the task to be hired. Although I agree with the impulse behind the proposal to create a separate IG for the FBI—to enhance the level of oversight over the FBI—I believe the fuller and more prompt realization of its objectives can be achieved through full funding of the Justice Department's OIG and through the elimination of the current restrictions on its ability to perform oversight over the FBI.

C. STRENGTHENING THE JUSTICE DEPARTMENT OIG

As I mentioned earlier, the Justice Department Inspector General may not, at his own initiative, conduct investigations of misconduct among personnel at the FBI without the permission of the Attorney General or the Deputy General. I am aware of no similar limitation that exists for any other Inspector General. This means that the FBI—arguably the most powerful agency in the federal government—is currently subject to less oversight than any other agency. A bill in the House to change that system in 1997 following the OIG's FBI Laboratory and Ames reports—died, and Attorney General Reno would not change the situation herself. Although I have explained the genesis of the limitation on the OIG's jurisdiction, it makes no sense any longer, assuming it ever did.

There are no reasonable grounds for concern that lifting the existing jurisdictional limitation will cause the Justice OIG to insert itself into sensitive intelligence and law enforcement matters, thus interfering with the ability of the FBI to carry out its critical law enforcement and counterintelligence responsibilities. The IG Act already gives the Attorney General the authority to block an IG investigation or audit if he determines that the activity will interfere with an important function or activity. To my knowledge, that provision has been used only once—when Attorney General Reno and I had an honest disagreement about the relative importance of the OIG's CIA crack cocaine report weighed against an ongoing narcotics investigation that she felt would be impaired if the report had been publicly released immediately upon completion. Accordingly, the mechanism exists to block the OIG from taking specific actions that may be viewed as potentially harmful, but there is accountability built into the system: the Attorney General's action must be the subject of a notification to Congress.

The more important issue is ensuring that the Justice OIG has the resources necessary to do its job. Authority without the resources is a ticket to frustration and failure. The OIG never possessed the resources necessary to meet its responsibilities during my tenure, and its current condition is far worse after the substantial cut-backs over the past three years, during which its staffing levels dropped more than 20% during a period in which the Department's growth continued to be vigorous. Congress obviously has the power—and should seize the opportunity—to remedy this serious deficiency. It is time for the Congress to restore the strength of an agency weakened in an arbitrary and irrational way.

D. OPENING THE FBI TO OUTSIDE INFLUENCES

In the process of doing the FBI Laboratory investigation, we learned that the FBI had long resisted opening itself to the entity responsible for accrediting crime laboratories throughout North America. In discussing this with the forensic scientists who were members of the investigative team, I learned that this was par for the course—that in the exchanges between personnel from the FBI Lab and from other labs, the FBI was there to impart knowledge and wisdom, rather than to receive it.

That attitude—some describe it as institutional arrogance—has deprived the FBI of the benefits and lessons to be gained from mutual exchanges with other law enforcement agencies and other large and complex organizations. The backwardness of the FBI's computer system and record keeping practices, now so painfully highlighted in the *McVeigh* case, is at least in part the product of resisting the advances in technology that swept through the rest of the organizational world some time ago. Although mutual exchanges with other institutions may not generally be regarded as a form of oversight, the FBI can benefit immeasurably from opening itself to outside influences of various kinds. This will help the FBI to overcome its debilitating insularity and embrace the outside world in a constructive manner.

That concludes my prepared testimony. I am happy to answer any questions you may have at this time.

Chairman LEAHY. Thank you very much.
Mr. Rabkin.

**STATEMENT OF NORMAN J. RABKIN, MANAGING DIRECTOR,
TAX ADMINISTRATION AND JUSTICE ISSUES, GENERAL AC-
COUNTING OFFICE, WASHINGTON, D.C.**

Mr. RABKIN. Mr. Chairman, Senator Hatch, members of the Committee, I am pleased to be here today to discuss the GAO access to the FBI's data, documents and personnel. I would like to briefly

describe the nature of the work we do at the FBI, talk about our general authority for access at any Federal agency, and then relate some of our recent experiences with the FBI.

As you probably know, GAO is the investigative arm of the Congress. This means that we respond to your requests for audits, evaluations and investigations of Federal activities. Our mission is to support the Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the Federal Government for the benefit of the American people. To effectively carry out that mission, we need the cooperation and support of the Federal agencies and other organizations that we review.

We have issued about 50 products concerning the FBI over the past 5 years or so. About 10 of these products focus specifically on the FBI. The rest include the FBI as one of several agencies that we have reviewed.

Congress has given us broad authority to access the FBI's data, documents and personnel in order to conduct our work. This is the same authority we rely on to perform our work at all Federal agencies. We also have specific authority to enforce our access.

While things go smoothly on occasion, on many other occasions our access at the FBI has been difficult, resulting in us having to follow cumbersome procedures to meet with Bureau officials and to get basic information about their programs and activities.

The types of recent access problems fall into several categories. The first is delay in receiving documents that we have requested and arranging meetings with FBI officials. For example, the Chairman of the Senate Governmental Affairs Committee recently asked us to review the FBI's foreign counterintelligence investigations. Specifically, we looked at the FBI's coordination of information it obtained with other components within the Justice Department, most notably the Criminal Division. Although this is a very sensitive subject, our work focused on policies and procedures and the FBI's adherence to them, not on the decisions regarding the investigations or the intelligence they produced.

At the start of our work, we submitted a written list of questions to the FBI concerning intelligence coordination. It took almost 4 months for the FBI to respond to our request. During that time, our staff contacted FBI officials at least 15 times to inquire about the status of their response.

Setting up meetings with FBI officials can also be a lengthy process. While the FBI has told us that its goal is to organize these meetings within 2 weeks, the elapsed time from meeting request to actual meeting for 3 of the 4 meetings on a current job took from 35 to 124 days. In the worst case, when the meeting finally took place the FBI sent substitutes for the official who was originally expected to attend the meeting.

Another problem we incur relates to the quality of the documentation the FBI provides. On a recent job we did for the Chairman and Ranking Member of this Committee's Subcommittee on Technology, Terrorism, and Government Information, we encountered numerous occasions in which the FBI was only able to provide us unsigned and undated print-outs of documents we requested, rather than the final signed versions. This presented prob-

lems for ensuring that the information represented the official position of the FBI and when that position became effective.

While infrequent, in some cases the FBI has denied access to the information we have requested. For the most part, the information we have requested has been no more sensitive than the information we routinely receive from other agencies during our work.

For example, for our work related to Federal teams that respond to chemical, biological, radiological and nuclear terrorist incidents, the FBI refused to provide us with information on the missions, budget and resources of its response teams. The FBI said that providing that information to us would jeopardize the teams' operational security, even though the information was unclassified. Although we could have acted to enforce our request for this information, we discussed it with our client and decided to drop the FBI from the scope of our review.

We have had some assignments involving the FBI in which access was not a problem. For example, during our recent review of Federal funding for the Los Angeles, Atlanta and Salt Lake City Olympic Games, our request for information about the types of projects and the activities that the FBI was funding was answered in a timely and cooperative way.

In summary, the FBI's reluctance to consistently honor our statutory rights of access has forced us to expend significant energy and resources. The FBI has also limited our ability to respond to our clients, the congressional Committees and Members of Congress, in a timely and efficient way.

We recognize that the FBI's responsibility to investigate criminal activity carries with it a set of imperatives that limit its discretion to disseminate certain types of information in order to protect the rights of the accused and the integrity of the investigative process. We believe, however, that these imperatives do not exempt the FBI from congressional oversight. The FBI can and should provide a much wider range of information about its activities to the Congress and to us.

I might add that we met yesterday with the Assistant Director of the FBI for Public and congressional Affairs. We discussed the nature of our concerns with them again. We have met with them in the past, and this morning he sent me the letter that the Chairman introduced into the record, agreeing to change procedures that should make our access better.

Chairman LEAHY. Purely coincidental with the holding of this hearing or the day of this hearing, I am sure. That is my statement, Mr. Rabkin. I am not going to hang that one on you.

Mr. RABKIN. Mr. Chairman, there are many areas where we can make a contribution to improving the FBI's activities and its management of them. We look forward to working with this Committee and others to help make the FBI as effective and efficient an agency as it can be.

That completes my oral statement, Mr. Chairman.

[The prepared statement of Mr. Rabkin follows:]

STATEMENT OF NORMAN J. RABKIN, MANAGING DIRECTOR, TAX ADMINISTRATION AND JUSTICE ISSUES, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, D.C.

I am pleased to be here today to discuss our recent experiences with the Federal Bureau of Investigation (FBI) related to access to the data., documents, and per-

sonnel that we have requested in doing our audit work for the Congress. Concern about access to records and people at the FBI is not a new topic for us. Indeed, in July 1991 we testified on access problems that we had at the Justice Department, most of which involved the FBI. Although Congress has not asked us to do a significant body of work at the FBI, we believe that there are many areas where we can make a contribution to improving the agency's activities and its management of them.

Let me start by outlining our statutory right of access to agency records, including those at the FBI, and follow with some examples from our recent experience. Most of these examples are related to specific access problems. I also want to note some positive experiences as well, because although not the norm, we want to present a fair picture.

In summary, the Congress has given us broad authority to access the FBI's data, documents, and personnel in order to conduct our audits, evaluations, and investigations. This is the same authority we rely on to perform our work at all federal agencies. While things go smoothly on occasion, on many other occasions our access at the FBI has been difficult, resulting in us having to follow cumbersome procedures to meet with Bureau officials and get basic information about their programs and activities. We have had access issues in a number of agencies over the years. However, across law enforcement-related agencies, FBI access issues have been the most- sustained and intractable.

BACKGROUND

Over the past 5 years, we have issued about 50 products that include information related to the FBI's operations and activities. In only about 10 cases, however, has the FBI been the focus of this work. For example, our report on the National Infrastructure Protection Center (NIPC), located within the FBI, describes its progress in developing national capabilities for analyzing cyber threats and vulnerability data and issuing warnings, enhancing its capabilities for responding to cyber attacks, and establishing information-sharing relationships with government and private-sector entities.¹ More often, our work includes the FBI as one of multiple agencies that are the subject of a given review. For example, last year we reviewed security protection for agency officials and the FBI was but one of 30 agencies that we covered.

When we initiate work with federal agencies we formally notify key officials about the planned review and meet with them to discuss the objectives of our work. At that meeting we try to determine which agency officials we should interview and what documents or data the agency has that may pertain to our work. At the FBI (and at other agencies), a designated liaison acts as our contact for arranging meetings and access to documents. With few exceptions, we work through the FBI liaison rather than contacting FBI officials directly.

In the course of our work across almost all federal agencies, we routinely receive large amounts of information, some of it highly sensitive. We are careful to guard the security of this information in a manner that meets or exceeds the safety standards established by the source agencies. We have an excellent record in relation to safeguarding sensitive and classified information.

GAO'S STATUTORY ACCESS AUTHORITY

We have broad statutory right of access to agency records in order to conduct audits and evaluations. Under 31 U.S.C. 716(a), federal agencies are required to give us "information about the duties, powers, activities, organization, and financial transactions of the agency." This statute applies to federal agencies, including those performing law enforcement functions (such as the FBI), and does not exempt law enforcement information from our access authority. If agencies do not make this information available in a reasonable time, we have the authority to demand access. We do this by sending the head of the agency a letter stating our authority and our reasons for needing the information. The agency has 20 days to respond, after which the Comptroller General may file a report with the President, the Director of the Office of Management and Budget (OMB), the head of the agency, and the Congress. If the agency still has not granted us access within another 20 days, the Comptroller General can bring suit in federal district court unless (a) the records relate to activities the President has designated as foreign intelligence or counter-intel-

¹NIPC was established in 1998 as an outgrowth of the FBI's Computer Investigations and Infrastructure Assessment Center and is located in the FBI's Counterterrorism Division. The NIPC director and most of the analysts are FBI staff. Other staff are detailees from other federal agencies and from international partners such as Canada.

ligence activities, (b) the records are specifically exempt from disclosure by statute, or (c) the President or the OMB Director certifies that the information being requested is covered by one of two exemptions listed in the Freedom of Information Act (FOIA),² and that disclosure reasonably could be expected to impair substantially the operations of the government. (See 31 U.S.C. 716(d).)

In the past, we issued a demand letter to the FBI requiring it to provide us with information in accordance with our statutory authority. In that instance the FBI ultimately complied with our request. However, the use of our statutory enforcement authorities can be adversarial and timeconsuming. We prefer to work out arrangements that will serve us well in all our work with the FBI and, therefore, enable us to respond promptly and completely to congressional requests.

In that spirit, in March 2000 we met with FBI officials to discuss numerous specific access issues and to try to work out more efficient arrangements to complete our work. At that meeting, and in a subsequent letter from the Assistant Director of the FBI's Office of Public and Congressional Affairs, the FBI pledged to do a better job in providing us access to records and people. As you will see from the recent examples cited in this testimony, our access problems have not been resolved.

MULTIPLE TYPES OF ACCESS PROBLEMS WITH THE FBI

The types of recent access problems fall into several categories and sometimes overlap. One of our greatest problems is delay. This relates to both receiving documents that we have requested and arranging meetings with FBI officials. We have experienced significant delay in an engagement we are just finishing - a review requested by Senator Fred Thompson when he was the chairman of the Senate Governmental Affairs Conunittee. The focus of that review is the FBI's coordination of foreign counterintelligence investigations, where criminal violations are implicated, with other components within the Justice Department, most notably the Criminal Division. Although this is a very sensitive subject, our work focused on coordination policies and procedures and the FBI's adherence to them, not on the decisions regarding the investigations or the intelligence they produced. A work log maintained for this job indicates that 112 days elapsed from when a written list of questions was delivered to the FBI to the delivery of its response.³ During this almost 4-month period, we contacted the FBI at least 15 times to inquire about the status of the response.

In another case, we experienced delays in receiving documentation for our work requested by Rep. Christopher Shays, Chairman of the House Government Reform Subcommittee on National Security, Veterans' Affairs, and International Relations, and Rep. Ike Skelton, Ranking Minority Member of the House Committee on Armed Services. The request concerned coordination between the FBI and several other federal agencies. The issue again was very sensitive, and the report was classified. Beginning in May 1999, we had asked the FBI to produce documents showing administrative guidance it had issued on these activities, the process by which these activities were approved, the timing and duration of specific activities, and evidence of interagency coordination. FBI officials told us they would locate and gather the documents for us. In December 1999, after senior GAO executives intervened, the FBI provided us a minimal and incomplete summary—not copies of original documents. In February 2000—9 months after our initial request—FBI officials told us they had no documentation or other records on the activities.

In other examples, we experienced delays in receiving documents related to our work on reports entitled, *Gun Control: Implementation of the National Instant Criminal Background Check System* and *Combating Terrorism: Federal Agencies' Efforts to Implement National Policy and Strategy*, among others. Needless to say,

²The two relevant FOIA exemptions are exemptions 5 and 7. Exemption 5 (contained in 5 U.S.C. 552(b)(5)) exempts from public disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7 (contained in 5 U.S.C. 552(b)(7)) exempts from public disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source; . . . ; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual.

³Due to our experience on FBI reviews, we have urged our staff to keep detailed records of their requests for data or meetings, the FBI's responses to those requests, and subsequent contacts when the agency does not respond in a timely manner.

these delays affected our ability to do our work efficiently and adversely affected our ability to provide timely information and advice to the Congress by postponing the issuance of our reports.

Setting up meetings with FBI officials can also be a lengthy process. While the FBI has told us that its goal is to organize meetings within 2 weeks, elapsed time from meeting request to actual meeting for 3 of the 4 meetings on a current job took 35 days, 41 days and 124 days. In the last case, when the meeting finally took place, the FBI sent substitutes for the official who was originally expected to attend the meeting. In these cases and in many more, the failure of the then FBI liaison and the liaison's superiors to return telephone calls concerning the status of our request added to our frustration and inefficiency.

Another problem relates to the quality of documentation the FBI provides. In our recent work related to the NIPC, requested by Senator Jon Kyl, then Chairman, and Senator Dianne Feinstein, then Ranking Member, of the Subcommittee on Technology, Terrorism, and Government Information, we encountered numerous occasions in which the FBI was only able to provide us with unsigned and undated printouts of documents we requested rather than final signed versions. Another case related to our work that resulted in the classified report mentioned earlier. The FBI sent us an "unofficial" document without letterhead, signature, date, or cover letter. This presents problems for ensuring that the information represents the official position of the agency and when the position became effective.

FBI officials in some cases have not been forthcoming with the types of details that would provide a richer picture of the issues we are auditing. In the case of our NIPC work, the FBI gave us a great deal of detailed information, much of which reflected favorably on its program, after receiving a draft of our report. Had this information been provided earlier when we originally asked for it—we could have done a more efficient job in conducting our audit work and drafting our initial report.

While infrequent, in some cases the FBI has denied us access to the information we have requested. For the most part, the information requested has been no more sensitive than information we routinely receive from other agencies during our work. For example, for our work related to federal teams that respond to chemical, biological, radiological, and nuclear terrorist incidents (requested by Rep. Ike Skelton, the Ranking Minority Member of the House Armed Services Committee), the FBI refused to provide us with information on the missions, budget, and resources of its response teams. The FBI said that providing the information to us would jeopardize the teams' operational security, even though the information was unclassified. Although we could have acted to enforce our request for this information through the statutory mechanisms described earlier, we decided to drop the FBI from the scope of our review. We needed to provide our client a composite picture of all federal agencies involved in this effort (we reported on 8 such agencies) and did not want to delay our report waiting for information from one agency.

NO ACCESS PROBLEMS IN SOME RECENT REVIEWS

We have had some assignments involving the FBI in which access was not problematic. For a review of federal funding of the Los Angeles, Atlanta, and Salt Lake City Olympic Games, for example, a request for information about the types of projects and activities the FBI was funding was answered in a timely and cooperative manner. Similarly, information for a review of computer security expenditures was provided with only minimal delays. Finally, although there were some delays in scheduling meetings and gaining access to documents, work on improving counterterrorism operations was not significantly delayed because other tasks could be completed while waiting for the requested information. Our staff on this assignment did not consider access a problem.

Although our examples of reviews that encountered access problems span a large number of assignments, in these assignments as well there are examples of good cooperation in providing information. The team working on the NIPC engagement, for example, found that field agents provided detailed and useful information when they were interviewed and that access improved during our review. We also note that for one meeting on our current foreign counterintelligence coordination assignment, a meeting was held the day after it was requested.

CONCLUSIONS

While over time we have experienced access-to-records problems at different federal agencies, our experience at the FBI is by far our most contentious among law enforcement agencies. The FBI's reluctance to consistently honor our statutory rights of access has forced us to expend significant energy and resources. The FBI

has also limited our ability to respond to our clients—congressional Committees and individual Members of Congress—in a timely and efficient way.

We recognize that the FBI's responsibility to investigate criminal activity carries with it a set of imperatives that limits its discretion to disseminate certain types of information, to protect the rights of the accused and the integrity of the investigative process. We believe, however, that these imperatives do not exempt the FBI from congressional oversight. The FBI can and should provide a much wider range of information about its activities to the Congress and to us.

A partially informed Congress cannot provide adequate oversight, balance competing interests fairly, resolve issues effectively, or deliberate soundly.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you may have.

Chairman LEAHY. Thank you very much.

Well, let's look at the situation we have. We hear in many ways the same story that we hear from a lot of different fronts that the FBI can make it difficult and unpleasant if you have an outside organization conducting review and oversight. They did answer quickly in the area where obviously they are being asked by the appropriations Committees how much extra money they want for Atlanta.

Mr. Bromwich talks about when he was the Justice Department IG that personnel from his office found doing work they were authorized by statute to do "time-consuming and frustrating because there was a general lack of cooperation from FBI personnel." Of course, Mr. Rabkin talks about their efforts to fulfill congressional requests for oversight of the FBI are made difficult due to resistance at the FBI.

Senator Danforth, who served as special counsel appointed by former Attorney General Reno, said that, in his view, there are strong pressures to resist divulging information to outsiders. Even though he carried the writ of the Attorney General, he had to threaten a search warrant to get documents from the FBI.

Now, this seems to run through a lot of the areas and seems to be part of an FBI culture. I would have liked to have heard directly from FBI Director Freeh, but as I had stated before, he is unavailable. But I also think back to what Judge Webster said, that he told them about plausible deniability, that there was no such thing and hiding for one hurts them all, and that instead they should be very open, the director and others, so that problems can be corrected.

Senator Danforth, in your testimony you also said that FBI agents who assist these outside investigators find that it is not a very good career move within the FBI. I am talking about the culture. You talked about a supervisory agent who did an excellent job helping to serve as liaison during your Waco investigation, but he felt that he was retaliated against because of it. Another supervisory FBI agent declined to work with your office because he thought that it would hurt his FBI career. Now, these are supervisory levels; this is not some junior agent who is just out of the academy and wondering where he or she is going to be assigned first.

Do you think that the current whistleblower protections that we now have for FBI agents are adequate, or do we need better?

I know Senator Grassley would be most interested in the answer to that, too.

Mr. DANFORTH. These are two current cases, Mr. Chairman, of people within the FBI who believed that cooperating with a special counsel looking into even what turned out to be innocent acts in the FBI were not good career moves.

The first was the FBI supervisory special agent who ran the investigation of Ruby Ridge. My deputy approached this person early in our investigation and asked if he would be interested in serving as our liaison with the FBI to facilitate getting records, and so forth, from the Bureau, and he said that he thought that it would be very damaging to his career.

We had a really excellent person named Patrick Kiernan who did serve as our liaison, and he has said to me that he believes that just working with us and facilitating the work of the special counsel's office was something that was damaging to him in his career in the FBI.

I believe that this is part of a culture. I don't think it is universally shared within the FBI, but I think that it is there, the idea that the FBI is not there to be investigated, it is there to do the investigation, and that anybody who is participating in anything that could result in any criticism of the FBI is in jeopardy for doing that. To me, this is the essence of the problem.

Chairman LEAHY. Well, I tend to agree with you. If you are not willing to admit or bring to light mistakes, you are just condemned really to repeat the mistakes.

I might ask Mr. Fine and Mr. Bromwich—I will start with Mr. Fine, then Mr. Bromwich—have you found in your experience that FBI agents come to you with complaints?

Mr. FINE. Yes, they do. Under the new whistleblower regulations that apply to the FBI, we are charged, along with the Department's Office of Professional Responsibility, with investigating claims of whistleblower retaliation, claims by FBI agents that they were retaliated against because of disclosure of waste, fraud or abuse within the FBI.

It is very difficult to prove those whistleblower retaliations. It is very hard to find a smoking gun, but we do find the same claims that Senator Danforth alluded to that FBI agents who are charged with investigating others in the FBI believe it is not a career-enhancing move, and believe that it is not helpful to them to expose FBI superiors or the FBI to the same searching scrutiny that you would expect of investigators investigating outsiders.

In my view, that is a reason to have an outside entity who is not dependent upon the people whom they are investigating come in and investigate the FBI. It is understandable that agents within the FBI who are charged with investigating misconduct of the FBI might hesitate to do so, might feel that this will not redound to their benefit. I believe that you need outside, independent, dedicated people who are solely given the responsibility to investigate and not have to rely upon the people that are investigating for advancement or promotion to do that work.

Chairman LEAHY. Are you referring to having the Justice Department IG be the one to conduct the role, unhampered, unhindered, as they would anywhere else within the Department of Justice?

Mr. FINE. Yes, I believe that would be the appropriate way to go. We are not dependent upon the FBI. We have career people whose sole job it is to provide oversight, and I think that is a better mechanism than having an entity within the FBI or people who are rotating through this office to do that kind of outside oversight.

Chairman LEAHY. Mr. Bromwich, do you feel that same way?

Mr. BROMWICH. I feel the same way. Let me just provide one anecdotal example that is important to what Senator Danforth said. In connection with our review of the Ames matter, starting in early 1995, I recall us having a very difficult time getting FBI agents with substantial counterintelligence experience detailed to us, because they didn't want to come over because they did not view it as a career-enhancing move.

Then once on the team, there was a great reluctance on their part to reach conclusions that were critical of the FBI. And then as the final underscoring of that, when the report was released the FBI personnel who were assigned to my office and under the supervision of people in my office declined to have their names on the report, even though everyone else who worked on the project were. That, to me, strongly suggested that they were unwilling to fully participate in a report that was, in the end, quite critical of the FBI.

Chairman LEAHY. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Thanks, Mr. Chairman. I am just going to ask two questions, and I want to use my time wisely.

Mr. Bromwich, I have read many of your reports. I have a great respect for your integrity. You write in the New York Times—I guess it is an op ed piece—"The FBI needs a manager." Let me quote one thing.

"The FBI needs greater external oversight. congressional oversight is crucial, but it is episodic and fitful." I think we would all agree with that. "The executive branch ensures central, continuing monitoring of its departments and agencies through its inspectors general, but the FBI has been largely exempt from the system. The Justice Department's Inspector General may not conduct investigations of misconduct among personnel at the FBI without the permission of the Attorney General or the Deputy Attorney General. The FBI, arguably the most powerful agency in the Federal Government, is thus subject to less oversight than any other agency." That is a compelling statement to me.

What is the history behind this that the IG cannot inspect any member of the Department without the specific approval of either the director or the assistant director?

Mr. BROMWICH. It is a complicated history. I try to go into it in some depth in my prepared statement, but basically the Justice Department did not want an inspector general for 10 years. The original batch of IGs were created through legislation in 1978. It took 10 years for the Justice Department to get its own, and during that period there was, it is my understanding, fairly substantial resistance to bringing an IG in.

One of the complaining parties was the FBI, such that when there was the statute passed in 1988 creating the Justice IG, a series of compromises were reached in the legislation and then imple-

menting the legislation that really stripped the Justice IG of the responsibility for doing misconduct investigations in the FBI.

Senator FEINSTEIN. What you are saying is that is unique in the Federal Government?

Mr. BROMWICH. So far as I am aware, it is unique.

Senator FEINSTEIN. In your professional judgment, would it be helpful if we were to amend the Code in that regard?

Mr. BROMWICH. Extremely helpful, and I think it is the right thing to do.

Senator FEINSTEIN. Thank you very much. Now, let me go to one other aspect, and that is the Wen Ho Lee case. In my view, when you file 59 charges against a person and you hold them in solitary confinement for 9 months, you ought to have something substantial to back it up with. And then to simply throw out all the charges, except a charge that was commonly performed, and that is downloading from your computer—I have had people come in and tell me who worked at that facility that that has been done by at least 100 people that they know of. I get very curious as to what was really going on there.

What do you think was, and why do you believe that Wen Ho Lee was targeted?

Mr. BROMWICH. I don't really know what went on there. As I indicate in my statement, my agency did not investigate that matter. Indeed, we sought to investigate and we were not permitted to. There has been a Justice Department investigation of that matter, handled by a very senior Assistant United States Attorney from the Eastern District of Virginia, and I think that his conclusions are obviously worth taking seriously. The op ed piece that I think you are referring to is one that I wrote just based on newspaper information and some knowledge of the way these kinds of cases work.

Senator FEINSTEIN. So you are backing away?

Mr. BROMWICH. No, I am not backing away. I think that in this case there was a tremendous amount of political pressure that was placed both on the Justice Department and the FBI, generated in part by scares about the Chinese trying to take over the 1996 election. Unfortunately, I think law enforcement agencies and sometimes the Justice Department are not very good at resisting that kind of pressure, and I think that is probably what happened here.

Senator FEINSTEIN. You write, again, in the New York Times, and I quoted it earlier, that it is almost impossible to imagine that such unprecedented charges, the first ever criminal charges under the Atomic Energy Act, would have been made if Mr. Lee had not been previously targeted. "The Government's claim that it wanted to solve the mystery of what happened to the information is not compelling. Criminal charges are rarely brought to solve mysteries, and as the judge pointed out, the Government has yet to explain why Mr. Lee's offers before his arrest to explain the missing tapes were not sufficient to meet the Government's legitimate concerns." To me, those are very significant words coming from an IG who is going to use words very carefully.

Mr. BROMWICH. I fully subscribe to what I said then, Senator. I found it a very disturbing case, and disturbing in the way that both the Justice Department and the FBI handled it.

Senator FEINSTEIN. Does anyone on the panel have any comment on this point, because this is rather fundamental to the mission of an agency when you hold somebody for 9 months in solitary confinement and then drop all the charges, unless there was a targeting. And that concerns me very deeply, if that were to be found to be the case.

Mr. Webster, I see you sort of moving around.

Judge WEBSTER. Senator, I am tempted to make a comment, and I think I made some reference to it earlier. The FBI does not charge; the United States Attorney and the Department of Justice charge. They make the decision whether to prosecute or not, and they make the decision whether to reduce the charges or dismiss them.

So I think it would not be accurate to say that the FBI influenced the elimination of those. They may have expressed a desire, as I found always the case both here and on the intelligence side, at CIA, of wanting to know as much as possible about someone who was believed to be committing acts of espionage, how much damage they had done to whom and why, and who were other people who might have been involved. They are not always fortunate enough to get that information, but I believe it is a natural desire on their part. I found it true in the military; let them go, just make sure we know what damage they did.

So I think there may be some area of questionable testimony, matters of what kind for which the FBI would be accountable and which may have influenced the decision to settle for a lesser charge, in the hope of cooperation, rather than have a case that might not be won.

Senator FEINSTEIN. Does anyone have any comment on that?

As I understand it, the FBI essentially went public with a number of comments on the subject, particularly on the issue of wiretaps, which the Attorney General had refused to do and was later proven, I think, to be correct. So I mean I as a policymaker would deduce that the FBI had a substantial stake in this case and throwing out, Mr. Webster, all of the charges, except for downloading information. That is a stunning turnaround.

Judge WEBSTER. I agree, but I don't think it was the FBI's decision.

Senator FEINSTEIN. To turn around?

Judge WEBSTER. The FBI had no authority to drop anything. This was a Department decision.

Senator FEINSTEIN. All right. Does anybody have any further comment on that?

If not, then I think my time is up.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, and we will follow up on this because, Mr. Bromwich, you raised a very good point. In Mr. Bromwich's testimony he had said the problem he was having after he was asked to review the Wen Ho Lee case and how he was stopped, but we will go into that in another round.

Senator Sessions was here earlier and we are glad to have him back.

Senator SESSIONS. Thank you, Mr. Chairman.

Senator Danforth, I appreciate your summary remarks. I think that reflects what so many of us who love and respect the FBI feel about its strengths and its weaknesses. Without doubt, there is no large agency in the world that can compare to it, in my view, in terms of integrity and hard work and ability. But I do sense, in 15 years as a Federal prosecutor working with the FBI daily, that they do tend to not want to admit error, and that compounds problems and it is not a healthy attitude.

Director Webster, you have been there as judge and director of the FBI. Do you think that this perception that I think is widely held among Federal prosecutors that the FBI is too reluctant to admit errors is an institutional problem that needs to be rooted out, and if so, how can we do it?

Judge WEBSTER. It is a fair question, Senator Sessions. I could also add that I worked with the FBI as a Federal prosecutor when I was U.S. Attorney. One of the things I always found was that special agents tell the truth. Now, with 11,000 agents, somebody is going to breach that.

Senator SESSIONS. I would agree with that. They tell the truth.

Judge WEBSTER. On the witness stand, they tell the truth; good or bad, they tell the truth. The question you are asking me is if the news is bad, are they necessarily going to tell it? And I don't ascribe that to any current reality of career destruction by telling we have got a problem.

It was my experience that I received the most heat and had the most difficulty in 9 years that I can remember in situations in which things that should have been brought to my attention didn't get there, not because it was illegal, but because someone made the judgment that it wasn't important enough.

The Cispis case, which you may remember, was a painful thing for me because I was leaving the FBI to go to the CIA and didn't know anything about the inquiry into a group of religious leaders allegedly assisting a terrorist group in El Salvador. The man at the desk was following Attorney General Levi's guidelines and did not have to report it upstream.

Because we train the FBI not to be politically or partisanly oriented, he just didn't see that investigating or at least running name checks on 100 or so clerics was going to be a matter of public concern. So he didn't tell anybody about it, and because he didn't tell anybody about it, I never heard about it. That is a condition that I think needs to be worked on all the time. They made the judgment.

In the McVeigh case, I am going to speculate a little here because there is a commission, I believe, that is going to look into this and come out with it. But we do know thus far that a Federal judge took a look at it and a court of appeals took a look at the material and decided it had nothing to do with the guilt or innocence of Mr. McVeigh.

What I suspect is that with the vast amount of information being collected—the most investigated case in our history, I understand—people in field offices looked at some of the anonymous letters, the newspaper clippings, the contributions of psychics, and put that somewhere else because it wasn't Brady material, it didn't have to do with guilt or innocence, and they were filing that way.

Senator SESSIONS. They decided to do that?

Judge WEBSTER. They decided to do that. A prosecutor later decided he was going to go beyond Brady, so he asked for everything. They were in the midst of converting their entire computer system at that point, and they asked for it from headquarters 5 or 6 times urgently to get everything out there.

I used to say be careful what you tell the Congress, because only at the FBI and only in the CIA are things never lost forever. I can think of a lot of agencies in Government where you could safely say we have no such records because they will never find them. But sooner or later, in the FBI or CIA they will come to light. And when they do, my experience has been they have been honest about it; they have been forthcoming. Here they are; they came in at the last minute, but they came, and they did not affect guilt or innocence.

I make no excuse for it because it slopped over and clouded one of the most important, successful investigations in American history—little bits and pieces of a truck traced to a rental agency identifying the people responsible in a very short period of time, but millions of pieces of paper came in.

We have to face the fact that at the FBI the culture is, as I see it, that we can do anything within our jurisdiction. We will go anywhere and do anything we are asked to do. That is different from a number of other agencies, and they are proud of that. That accounted in some measure for new technology for which they were not adequately prepared to address the issues.

I remember bringing in two people from the outside to address our computerization back 20 years ago. They did a fine job, but as you know, technology is moving so fast that you really have to stay up with it. Congress was not in a particular hurry to keep renewing the technology every 2 or 3 years, the way it is done in industry, and they are living with equipment that was behind the times with people who were managing it who were behind the times.

Technology at the labs—they should have, in retrospect, been bringing people in from the outside to be sure that they had the benefit of modern technology, not relying on their own resources, as good as they might have been. Those are areas for scrutiny, and I think that in the light of things that have happened changes will come. They are already coming in the wake of the Hanssen case, I am glad to see.

But I don't think it has to do with the character and credibility of the men and women who serve there or their willingness to tell the truth. Sometimes, they made a judgment that these things aren't important. They should be careful about making judgments like that.

Senator SESSIONS. Well, I am glad you answered it that way because you are correct. Some agent in some office gets a teletype to send in all things related to a certain case, and two things can happen. It gets lost, it never really gets there, it doesn't get produced or the computer doesn't work, or, second, somebody can look at it and say what I have doesn't make any difference, and throws it away. This isn't discoverable evidence; some lawyer told me this isn't Brady material, I don't have to produce it, and just not do it. The combination of those things sometimes causes a problem.

I know when I tried a multi-district case, there was always a lot of paranoia about do we have all the documents from all the outlying offices. I learned to specifically ask, because you would too often find that they had given you everything in the local office, but not the leads that had been run around the country. People don't realize how easy it is to make those mistakes, in a big bureaucracy how these things can happen.

But I do think there is a bit of a problem. I don't know if it comes back from the Hoover days, which has a lot of the great strengths of the FBI, whether it comes from their intelligence mission, counter-espionage mission that they have. But there is a bit there that I think when it comes to trying public cases in the United States district courts of America, they need to be more open and more forthcoming, and I think the leadership needs to require that.

I have taken too much time.

Chairman LEAHY. That is all right. I think I find myself in a great deal of agreement with what the Senator from Alabama is saying and I appreciate him doing that.

Senator SESSIONS. Does that make you nervous?

[Laughter.]

Chairman LEAHY. Probably not half as nervous as it is making your caucus. They are terrified they might lose another one. I am sorry. Maybe it is because I was born in Vermont, that slipped out.

Senator SCHUMER.

Senator SCHUMER. Thank you. I want to thank our five witnesses for their fine testimony and every one of you for your service to this Government and to this country.

I am trying here—and as you can see, the focus I have taken is not the specific individual cases which many of you have talked about, but what is the deeper thread. And I guess I would ask each of the witnesses or any of the witnesses who wishes to respond, although I would ask them to be brief because the time is so limited, do you think there is a deeper thread behind all of these different issues?

Admittedly, these are all complicated cases where, as Senator Sessions said, it is easy to make mistakes. But it just seems there are too many of them; there are more of them these days than there used to be. I will tell you what the average citizen thinks. They think if there are mistakes in the high-profile cases where there should have been extra care, imagine what is going on in the low-profile cases where there was probably a little less scrutiny and a little less supervision from the top.

The second question I have is do you think that an agency that has to be nimble and sort of lean, somehow this agency has gotten too large? It is almost impossible to expect the FBI, say, when Judge Webster was there, which was probably half the size—is that fair to say—to be as good now.

I will just tell you one little story which bothered me. I have a friend who is in a prosecutorial office in New York City, top level, one of the best prosecutors in the city. This is in a city office, and this person said to me that they would rather have now a New York City police detective on a case than an FBI agent. Even though the FBI agent was a more qualified person, there were so many places that that person had to check and so many bureau-

cratic loopholes that they had to go through that they couldn't be as effective on the case as they used to be, which I found kind of surprising.

So let me ask first the two inspectors general what they think and then maybe go to Mr. Danforth and then Judge Webster.

Mr. FINE. Senator Schumer, I do think it is an issue and a problem. It is a management problem, in my view. In many of the smaller cases, you have agents who know the details of the case, know all of what is in the files and can go by the seat of their pants without a computer system or a management system that you need in the high-profile, the extensive, the extended cases that you are getting in the FBI, such as in the Oklahoma City bombing case.

I also believe it is an important issue about attending to the details and document management and the discovery obligations that to some extent has not been the focus of attention the way it should be within the FBI. The glamorous part of the job is to investigate, to catch the criminal. But an equally important part of the job is to ensure that the documents are produced, the discovery obligations are attended to. And I believe that the focus of the FBI has sometimes not been directed in that way the way it should.

I do believe it is also important for the FBI to open itself up to outside influences, outside people. I believe the FBI has done some good things by bringing in outsiders to bring new ways of operating to the FBI, both in the FBI Laboratory in response to our report, bringing in outside scientists rather than an examiner who rose through the ranks of the FBI, and also in the Information Technology Division. They have a new director there from IBM who I believe is doing good things.

So I believe it is important for the FBI to bring in outside influences, outside people, and open itself up to outside scrutiny.

Senator SCHUMER. They are not doing enough of that now.

Mr. FINE. They need to do more of it.

Senator SCHUMER. I would ask the others what they think of the idea of the commission that Senator Hatch and I have talked about, and any suggestions as to how it should be structured.

Mr. BROMWICH. I agree with you, Senator Schumer, that every agency could use that kind of top-to-bottom inspection at least every few decades. I think that with all of the public problems that the FBI has had in recent days, this is as good a time as any.

I think we shouldn't strain to find common threads everywhere in all of these problems, but I do agree with Mr. Fine that there are some management and supervision issues that do run through some of these cases. For example, we found in the Lab that complaints about the way preparation of scientific reports were handled were not handled by supervisors in the Lab. They were ignored, they were swept under the rug, and the problem became far worse. As Senator Grassley recalls, I am sure, it became really a cancer in the Lab.

I also agree that the FBI in the information technology area, in the Lab and elsewhere, needs to open itself up. Director Freeh did the right thing in bringing in a world-class scientist to head the Lab after the IG's investigation. But originally they were proposing

three agent candidates from within the FBI and were really following the course of business as usual.

I think it is very important that when a major piece of oversight work is done like the Ames review of the FBI Lab review that the Congress can have confidence that the top management of the FBI simply doesn't agree with the recommendations in a perfunctory way, but that it has been a bit of a wake-up call and that they have actually changed their practices. I think Congress can be helpful in that regard.

As to the issue of whether they are too large or not, they probably are, but I think with the right people in terms of managers and the right systems I think it can function, and function well, and restore some of the lustre to its reputation that it may have lost in recent months.

Senator SCHUMER. Senator Danforth?

Mr. DANFORTH. Senator Schumer, first let me say that—

Senator SCHUMER. And I just want to thank you for your great work on Waco. It was a true national service.

Mr. DANFORTH. Well, thank you very much.

Senator, I don't think any agency, or human being for that matter, no matter how small it becomes, is ever going to be mistake-free. We examined in our investigation 2.3 million pages of documents. We had 15 people who did nothing but look at documents. My guess is in Oklahoma City there were many more documents than that, and they were probably produced by hundreds, if not thousands, of FBI agents. Therefore, the fact that, say, 4,000 or whatever the number was were missing, that to me is to be expected. I think there is always going to be a box somewhere that people come up with.

I think that it is a mistake to have a standard of absolute perfection with respect to mistakes because I think if we do that and every mistake is investigated, then that is to say cover up your mistakes because you are going to be in big trouble if you make them.

I do believe that there are people within the FBI who don't want anybody to believe they make mistakes, and I think that that was the story of Waco. Instead of coming forward initially—and if they had done that, everybody would have said, OK, fine, thanks for explaining it—they didn't come forward.

I further believe that during our investigation there were people within the FBI who just plain didn't want to cooperate with us. I think it was a small fraction, but I think that they were some pretty well-placed people. We had difficulties with the general counsel's office, not with the general counsel himself, Larry Parkinson. We think he was cooperative. But we did have problems with them. They were not producing everything to us. We at one point had to threaten a search warrant, and we had to send 3 lawyers and 11 postal inspectors to the FBI to look for documents on our own because we didn't have any confidence in them.

So I think I agree with what Senator Sessions said. I don't think it is quite as benign as Bill Webster said. I think that there are a lot of mistakes, but I think that there is a culture in the FBI, somewhere in the FBI, to keep this from coming out in the public.

I believe that the most important reform is to change that culture, and I don't think there is any easy way to do it. I think oversight from this Committee on a systemic basis, not just every now and then, is very, very important. I believe that the President of the United States, the Attorney General, and the Director of the FBI have got to make it clear to every agent from day one at the FBI academy that there are worse things than making mistakes, and the worst thing is not being forward about making that mistake.

Senator SCHUMER. My time is up. Thank you. I appreciate it.

Chairman LEAHY. Senator Grassley.

Senator GRASSLEY. Thank you all very much for your testimony on this very important issue. It is very timely to have a hearing like this, as the administration is selecting a new director.

I am going to start with Mr. Bromwich. I want to ask the question and then I want to give some backup. This would be asking you for suggestions of what could be done to better address the issue of whistleblower protection within the FBI.

I ask this because you remember the name of Dr. Fred Whitehurst. He was, I think, the highest-profile whistleblower that I have ever had go to an IG. He suffered attacks, not only retaliation from his FBI colleagues, but also from you as well.

You were recently quoted as saying that you now wish your report had made it clearer that Whitehurst deserves full credit for exposing serious misconduct. So I believe we can learn something from your reflection of 4 or 5 years on that.

Mr. BROMWICH. Thank you very much for saying that, Senator Grassley.

It is true that Dr. Whitehurst was the principal source of allegations for our FBI Lab investigation, and it is true that in retrospect I think we were perceived as being too critical of him rather than commending him sufficiently for the service he performed.

We did it the way we did it because we held him to the same standard as all of the examiners against whom he made allegations, and against that standard he fell short in many respects because many of his allegations were not supported by the evidence.

But what concerned me and what led me to say what I said was I think that we were perceived as more critical of him and not sufficiently appreciative of the service he rendered by bringing his allegations forward. And there is no doubt that but for his persistence in bringing the allegations again and again and again over a long period of time within the FBI and finally to the IG's office that the reforms that have subsequently been made in the FBI Lab would not have been made, and he deserves credit for that.

All of the details of the current Whistleblower Act are ones that I am not deeply familiar with, but my impression, Senator Grassley, is it is still too complicated and too indirect for FBI whistleblowers on a range of allegations of misconduct to bring those directly to the inspector general rather than jumping through hoops before they have to do so.

So I think that would need to be examined to determine whether there are still too many barriers that interfere with the ability of FBI employees who believe they have knowledge of wrongdoing to bring those forward to an entity outside the FBI.

Senator GRASSLEY. I want to pick your brain on increasing the authority of the Department of Justice Inspector General and more on mechanics. What do you propose should happen to the FBI's Office of Professional Responsibility, and what structural changes would you recommend within the Justice IG in terms of personnel and organization to deal effectively with the new responsibilities, if it would take any new responsibilities?

Mr. BROMWICH. Let me take a quick pass at that, but I think Mr. Fine is currently thinking about that issue as well.

I think that just as has been the case with many other Justice Department components where there are still internal affairs arms that handle the non-criminal and less serious matters, there would still be an important function to be served either by FBI OPR or by some other entity. In other words, I don't think it would need to be eliminated from existence. And, in fact, I don't think that would be a good idea.

But I think that all criminal matters and all administrative misconduct allegations at a certain level of employee or above should, by rights, sort of go first to the inspector general's office, and it ought to be up to that office to refer things back to the FBI.

Again, we are not writing on a clean slate here. That is exactly the sort of system that has existed with respect to the internal affairs arms in other Justice Department components that have law enforcement functions—the Marshals Service, the Immigration Service, the Bureau of Prisons, and so forth. It is only the FBI and the DEA that have had this special status that allows them to have primary jurisdiction over misconduct matters relating to personnel in those agencies. I think it is a two-tiered system, it is an unequal system, and it is a bad system.

Senator GRASSLEY. Do you have something you want to add to that?

Mr. FINE. Yes, Senator Grassley. I agree with Mr. Bromwich. I believe that the relationship of the IG at the Department of Justice and the FBI OPR should be similar to the relationship that the IG has with other entities in the Department.

I believe FBI OPR can and should investigate and deal with discipline of line agents for certain matters. But on criminal matters and high-level administrative misconduct or sensitive, high-profile matters, the Department of Justice IG should have the authority and the resources to be able to investigate those matters.

Senator GRASSLEY. Let me have 15 minutes to—or 15 seconds to—

Chairman LEAHY. I was about to get Senator Durbin's name plate on the side of my head on that one, but go ahead.

[Laughter.]

Senator GRASSLEY. Several of the speakers made reference to my use of the words "cowboy culture." Recently, I did that, but I also first did that in 1997 when we were involved with the FBI crime lab problems and Mr. Bromwich's own investigations of them. At that particular time, we were dealing with this organization that attempted to thwart an independent investigation, launched its own sham investigation, and then attempted to discredit and destroy the careers of their own respected scientists who brought these problems to light. On top of all the other cases where there

is evidence of screw-up, in most of these the real foul-ups within the FBI occurred after the initial mistakes were revealed.

I can't help but continue to use the words "cowboy culture" when the fundamentals of the FBI are being forgotten, and those fundamentals are that when their agents seek the truth and let the truth convict, they do a good job. But it is in these other cases where they try to interfere with that process that they have created a problem for themselves.

Thank you.

Chairman LEAHY. I agree, and the Senator from Iowa has been consistent in these concerns for as long as I have been on this Committee.

The Senator from Illinois.

Senator DURBIN. Thank you, Mr. Chairman. I would like to say, although I believe that a separate inspector general for the FBI is the appropriate thing to do, I would like to at least put a word of defense in here because some question my conclusion.

Mr. Bromwich has said that he believes that changes within the law and within the OIG could make a difference. That is possible. It could be an approach that is equally effective, maybe more so. I am not sure.

Here is my misgiving: when you take a look at the budgetary figures for the Department of Justice between 1993 and the year 2000, it is fairly overwhelming. The size of the Department of Justice increased from an \$11.2 billion budget to \$21 billion. The workforce at the Department of Justice went up from 98,000 to 130,000 in that period of time.

The FBI increased dramatically in size, from \$2.1 billion to \$3.6 billion, a 70-percent increase in their budget. In the same period of time, the OIG budget went up 18 percent. That's DOJ, 90 percent; FBI, 70 percent, OIG budget, 18 percent. And then when you look at the actual people working in OIG, it decreased by 15 percent.

So while the number of employees that the OIG had jurisdiction over increased by 32,000, the number of watchdogs in the inspector general's office decreased by 15 percent. I would have to check to make sure, but it is hard for me to believe that Congress did that alone. My guess is that the administration and the Attorney General at the time in each of the annual budgets was at least complicity in this decline of resources in OIG.

Put that lack of attention to the inspector general's responsibility together with what we have heard over and over today about the culture at the FBI and I hope you understand why I have come to the conclusion—and some may join me and some may not—that creating a separate inspector general that is accountable not only in his or her activity but also in his or her budget will tell us whether or not we have a cop on the beat when it comes to keeping an eye on the working of the FBI.

I think otherwise, as you have reported, Mr. Bromwich, in your statement here, the OIG again is going to continue to be marginalized, excluded, shunned, cloistered. The FBI knows how to do this. The GAO learned that. I think the Intelligence Committee here on the Hill has learned that, too. The FBI is pretty good at

this. They have developed this skill over many, many decades, and that is why I think a separate IG might be the way to go.

Let me address a specific issue that I think goes to management maybe more than motive, and that is this whole question of computers. Sitting in the Intelligence Committee, I received a briefing which I thought was amazing and then read about it the next day in the New York Times—no surprise—that talked about Mr. Hanssen's activities 10 years ago.

Mr. Hanssen fancied himself as a computer buff, and he tended to know more about computers than most of the people he worked with. So he bought a hacking device, put it into his computer, hacked into his superior's computer, downloading information about Russia he wasn't supposed to have. And then do you know what he did? He reported himself.

He went to his superior and said, I just hacked into your computer, pulled down the information about Russia I am not supposed to have, and I want to show you how porous our system is, how vulnerable it is. Very crafty thinking on his part, because from that moment forward he could hack as much as he wanted and say it is just another experiment to show you how vulnerable we are. Well, we know those experiments were deriving information which, it has been alleged, he sold to the Russians.

Now, what I find interesting here is that this U.S. News and World Report goes into some question about computers at the FBI. You would think that an agency with this responsibility of investigation would have to be on top of the computer business if they are going to be effective.

What we read in the news report here really suggests otherwise. "One of the FBI's divisions still uses computers with 386 micro processors, chips so old they haven't been sold for nearly a decade. FBI computers don't have rudimentary Internet browsers. Agents can't even send e-mail outside the Bureau's internal network."

Mr. Robert Diaz, 52 years old, a retired IBM exec who has been hired to try to clean up the computer mess said that for half a century agents and friends of agents ran everything. "And what do they know about computers," he says. "It beats me." "Almost every organization upgrades its computer networks every 2 or 3 years," Diaz says, "but at the FBI 60 percent of the desktop PCs are 4 to 8 years old. The networks are 12 years old. The system is not built for the level of complexity agents must deal with today."

Mr. Fine, you reported this, didn't you? You had an investigation 5 or 6 years ago that went into this problem and really pointed to the fact that going beyond the fortress mentality at the FBI, there frankly was a question of competency when it came to the mechanics of the operation of the Bureau. But from what I can gather, for 4 or 5 years there has been no response, or very little. Was that the case?

Mr. FINE. We have reported that. In addition, we did a review in the campaign finance investigation and found that they were not inputting data into the computer system, that they were not using it the way they should, that they couldn't with confidence state what was in the computer, and that if they had done a search they would get it. Quite frankly, the response to the report was we

agree and we will take measures. But we recently learned that they have not responded to it.

Senator DURBIN. Exactly the point. Was it not your responsibility as inspector general to find that sort of thing? Going beyond the question of whether or not there is some venal conduct here, we are talking about competency in management. And you found, and I think it has been found and repeated here, that when it came to the management of the premier law enforcement agency in America, they were in the horse-and-buggy era and they are still stuck there.

Mr. FINE. They still have problems. I think that is why it is a good idea to bring in someone from the outside. But we are seeing even now that many of the agents aren't trained sufficiently, aren't using the computers properly, don't have adequate computer support. It is a significant problem.

Senator DURBIN. And so when 4,000 documents don't show up in the McVeigh case, I think it is conceivable that there were millions, as Senator Danforth has said, but it was the largest terrorist act in the history of the United States. It was the highest profile case in modern memory, and maybe it is just possible that beyond someone pushing a box under a desk, their computers just might not have been up to the job. I don't know the answer. Maybe Judge Webster will tell us the answer to that as part of his investigation, too.

Mr. FINE. That is part of our review in the Oklahoma City bombing case and we certainly will be looking at that, Senator.

Senator DURBIN. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Gentlemen, I thank all of you. We will submit other questions for the record. We have kept you longer than we had said, and this is obviously the first of what is going to be many such hearings.

I was struck by a couple of things, if I could just take a moment on this. Judge Webster talked about the tremendous increase in the Federalizing of crimes. I said once in one of these things, the next thing we know we are going to have a Federal crime on jaywalking in a neighborhood because somehow that street goes out to the town road, which goes to the State road, which goes to the Federal interstate highway. But we are going to have to hire a few extra officers for that. The rodeo one is interesting.

I am struck by the days when I was a prosecutor and I got a call 1 day from the local sheriff who said, you know, we recovered this 5-year-old car that is kind of banged up and had been reported stolen. The next thing you know, there are two FBI agents here who want to take over the case. It wasn't until we had a meeting and were briefed in Washington, a number of the prosecutors—Mr. Hoover was very proud about the enormous amount of money they recover for the country, and it was basically stolen car cases that would be reported at face value that the local sheriff had probably found anyway. And I thought how terrible it was to send a well-trained FBI agent out on that.

I mentioned to Senator Hatch here earlier that I think if we want to do a Presidential commission or a commission, we ought to have somebody go back now through the whole Federal criminal code, and I think we could throw out three-quarters of what is

there and allow State and local governments to handle them. They are far better trained for it.

Obviously, in the Oklahoma City bombing, nobody could have put all that together the way the FBI did. Let them concentrate on things like that and let local law enforcement take care of the things they want. We would all be better off. The courts would have a lot less things in them. Everybody from Chief Justice Rehnquist on have said we are clogging up the courts with cases that should be in State courts because we have criminalized so much.

What Senator Danforth has pointed out about the balkanization in here—we have got to find a way to break that down because I want the FBI to be the best possible. The country is better off for that. And just as we make mistakes in the Congress and we have to own up to it, if there are mistakes in agencies of whatever departments, own up to them. Usually, the result is you are a better department afterwards because you correct the mistakes and move on from there. And don't punish the person who points out the mistake.

So thank you all very, very much for taking such time out of your very busy schedules.

We have a statement from Senator McConnell which we will put in the record.

[The prepared statement of Senator McConnell follows:]

STATEMENT OF HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

I would first like to thank the Chairman for calling this important hearing. All Americans are troubled by the stream of allegations surrounding the FBI over the last eight years, stemming from incidents such as Waco, Ruby Ridge, and more recently, the Hanssen and McVeigh matters. The number and significance of these incidents strongly indicate-if not necessitate the conclusion-that there are systemic problems in the Bureau's operations. And it is therefore highly advisable for the Chairman to convene this hearing to determine the scope of the problems that exist and the best solutions for them.

That being said, the FBI is still, in my opinion, the foremost law enforcement agency in the world. Its successes over the years are both legion and legendary, and its agents and employees are some of our finest public servants. It is because of the desire to see the Bureau maintain this preeminent status that today we are taking a hard look at its operations. It is a disturbing marker for the rule of law when, for example, 61% of Americans believe that their FBI started the fire that consumed so many citizens at Waco. And it is just as disturbing when, as our former colleague found, these beliefs are unjustified and their causes-dishonesty, delay and disingenuousness-seemingly preventable.

I continue to support evaluating the best remedies for the problems that have plagued the FBI in the recent past. But my preliminary opinion is that funding increases for the Office of Inspector General in the Department of Justice and establishing a separate Inspector General's Office for the FBI may be necessary-but they are not sufficient-conditions for major improvement. If, as Senator Danforth believes, the problem is one of culture, then it would seem to me that additional investigative offices and increased funding would provide better and quicker explanations as to what caused problems, but I don't know how effective such measures will be in helping prevent these problems in the first place. It seems, as Senator Danforth suggests, that a more organic remedy is needed, beginning with strong and persistent messages from the Attorney General and the Bureau's Director that, as our former colleague put it, "the role of the FBI is to protect the country and the Constitution, not to protect the FBI from criticism."

In closing, let me thank the Chairman again for recognizing the need for us to explore this matter. I enjoyed reviewing the prepared remarks, and I look forward to hearing from our witnesses. Thank you.

Chairman LEAHY. The Committee stands adjourned.
[Whereupon, at 3:26 p.m., the Committee was adjourned.]

REFORMING FBI MANAGEMENT: THE VIEWS FROM INSIDE AND OUT

WEDNESDAY, JULY 18, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Cantwell, Hatch, Grassley, Specter, and Sessions.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. I know that Senator Hatch is testifying at another hearing and will be joining us very soon. Senator Grassley is here. Senator Grassley, if you have no objection, I am going to go ahead and start the hearing.

Senator GRASSLEY. I think that would be perfectly all right, unless Senator Hatch's staff says otherwise.

Chairman LEAHY. He is testifying. We will start with my statement and then we can always go to Senator Hatch, or if he is detained longer there we will break into the testimony for him to speak.

This is the second hearing we have held on the Federal Bureau of Investigation. I said when I became Chairman I thought it was time to take a long overdue look at some problems in our Nation's foremost law enforcement agency.

Before I address the subject of today's hearing, I want to note three significant developments concerning the FBI that have taken place in recent days. The first is that the President has announced his intention to nominate Robert Mueller to be the Director of the FBI. I have met with Mr. Mueller and I know several other members of the Committee have, too, and I intend to proceed with his confirmation hearing expeditiously. As soon as the President actually sends the nomination to the Senate, we will schedule and move forward with a hearing.

The second important recent development concerns an issue that was at the heart of this Committee's meeting earlier, and that is FBI oversight. Last Wednesday, the Attorney General issued an order redefining the jurisdiction of the Office of Inspector General to give it authority to investigate allegations of misconduct by employees of the FBI and the Drug Enforcement Administration.

As the witnesses at our last hearing explained, the scope of the Inspector General's authority over the FBI has been a source of recurring controversy and it has made FBI oversight more difficult over the years. I commend Attorney General Ashcroft for his wise decision to remove the remaining restrictions on the Inspector General's authority, and I want to acknowledge Senator Grassley for his efforts in helping to encourage this important reform.

But even though the Justice Department's internal rules have been changed, and I do commend the Attorney General for that, I believe we need to make this change permanent by legislation. We should not leave matters in a position where the Inspector General's important role in performing FBI oversight could once again be frustrated by the stroke of the pen by a future Attorney General.

Now, the third development that bothers me greatly as Chairman of this Committee, was yesterday's announcement by the Attorney General about weapons and computers that are missing from the FBI's inventory.

It is not just the number; when you look at the number of guns as compared with the number of guns in the FBI inventory, it seems to be a very small number. If you look at the number of computers, it may be a small number. But what bothers me is that some of the computers supposedly contained classified information. You would think after the total fiasco of the FBI's handling of the Hanssen matter that they would have learned on this matter. We also have missing weapons: 184 were stolen; 265, including 91 training weapons, were reported lost or missing, and 184 laptop computers.

Now, I said at the beginning of this that there are some very, very serious management problems in the FBI, and I am hoping these hearings will help us identify them. In trying to figure out what we do next, we have to look at what has been done in the past.

FBI headquarters in Washington constantly struggles to stay abreast of developments in the FBI's 56 field offices and 44 legal attache, or LEGAT offices, and to ensure that each of these offices is following orders and procedures. It is often when field offices ignore or do not fully comply with orders from headquarters that problems happen. One example is the FBI's belated production of the Oklahoma City bombing papers.

We continue to await the outcome of the Justice Department's Inspector General review of how this happened in the face of 16 separate orders from headquarters. The Director of the FBI himself sent an order for pretrial production of these documents: 16 orders sent from headquarters, and still they were not all produced.

Then we have the May 2000 report of the Attorney General's Review Team. This was headed by Federal prosecutor Randy Bellows on The Handling of the Los Alamos National Laboratory Investigation of Wen Ho Lee. This dissected the relationship between FBI headquarters and the Albuquerque, New Mexico, field office, and found serious flaws, some of which stem from a fear on the part of lower-level FBI agents at headquarters of being perceived as criticizing more senior members.

While the full Bellows report remains classified, in response to a request from Senator Specter and myself, the Justice Department has provided the Committee with an unclassified version of the report. The report documents how the National Security Division became aware of the field office's "poor handling of the case," yet—and this is the important part—"took no effective measures to fix the problem, even when it was given an opportunity to do so. Instead, it simply attempted to run the case from FBI headquarters, an approach that was unmanageable from the start and which would severely handicap the investigation."

When, for example, two extra agents were sent to the field office to assist in the Wen Ho Lee investigation, they were diverted to other investigations. And when they were diverted to other investigations, the Assistant Director of the FBI's National Security Division was not informed. A unit chief in the same headquarters division explained, "it would have been 'impolitic' to advise [the Assistant Director] of the division. He said the 'culture' of the FBI is 'very intolerant' of that kind of reporting."

This unit chief told another supervisory agent that he should not "stir the beans" because it would have been inappropriate to "mess with the SAC's decision." He warned, "you don't get ahead in the FBI 'if you stab SACs in the back.'" As a consequence, the problem of the two agents being diverted remained unresolved.

Periodic inspections provide a significant mechanism for FBI headquarters to check on the progress of cases and communicate in the form of interrogatories specific complaints to field offices about their handling of cases. But not withstanding that, the Bellows team found some dirty laundry there, too.

A supervisory agent involved in the Wen Ho Lee investigation at headquarters said that "interrogatories are not, in reality, used as an opportunity to complain about a field office: we're never allowed to be candid in interrogatories."

Now, this, of course, prompted appropriately strong criticism in the Bellows report, which stated, "If true, if the FBI's 'culture' does not encourage, indeed require, that FBI-HQ personnel be blunt and candid in interrogatories, this essentially eviscerates the value of the interrogatories. . . . The issue is [redacted] failure to avail itself of an institutional mechanism—the inspection process—which is specifically designed by the FBI to ensure that all significant problems in a field office are identified and addressed in an inspection." In effect, the process is there, but the process is not allowed to work. It is like a catch-22; the major is in only when he is out.

The Bellows report concluded that "[i]f the FBI 'culture' discourages 'full disclosure' in the interrogatories or interviews associated with the inspection process, that 'culture' needs to be altered. All FBI personnel should be advised that the FBI will not tolerate anything other than 'full disclosure' in the inspection process." This recommendation is so patently obvious it is shocking that it had to be made. I cannot imagine a single Senator on this oversight Committee who would disagree with that conclusion. So the challenge to the new Director and new management team he brings into the FBI will be to make sure it happens.

Even within FBI headquarters, disputes between the National Security Division and the Criminal Investigative Division over the

Wen Ho Lee investigation appear to have slowed the investigation down. In a heavily redacted part of the Bellows report, we learn that concern over the effect of an espionage prosecution on the FBI Director's interest in opening a LEGAT in Beijing was a factor in the investigation. Be careful how we investigate the Wen Ho Lee case because we want to open an office in Beijing. Good Lord. You can understand why the Bellows report summarizes "the stark choice" of concern to certain senior FBI agents "that it might come down to doing without Beijing LEGAT or espionage prosecution." It should be an easy choice. "Finally, this must be said: NSD permitted CID's admittedly legitimate concerns about [redacted] sensitivities to undermine a critical FBI investigation about [redacted] espionage."

We are fortunate today to have former Commissioner of the U.S. Customs Service, Raymond Kelly, to talk to us about structural problems he encountered at that law enforcement agency and what he did about them.

Another key area of concern about FBI management is in the area of security and information technology. In a letter last month to Chairman Sensenbrenner of the House Judiciary Committee, former FBI Director Freeh conceded that the FBI's computer systems were "obsolete" and that its approach to planning and funding for improvements was "inadequate." At a briefing last week, the FBI told our Committee staff that there are no less than 15 areas where the FBI's internal security must be improved.

We will be hearing today from Mr. Bob Dies. Mr. Dies is a former executive at IBM who has been hired by the FBI as an assistant director to take on the herculean task of upgrading its information technology. Mr. Dies will tell us what he has discovered since he took the job.

We are also going to hear from Mr. Ken Senser, who has recently been brought in from the Central Intelligence Agency to be a Deputy Assistant Director of the FBI in charge of internal security. Internal security at the FBI is obviously a major concern, especially in the wake of the egregious breach of internal security in the Hanssen case, and we appreciate Mr. Senser's helping to keep the Committee informed.

A final management issue that our hearing will address is how the FBI handles its internal discipline. It is important that the process be perceived as fair. A perception that credible allegations of misconduct are being whitewashed or that a double standard of discipline is being applied in which senior supervisors get lighter punishment than line agents will erode confidence from the public. Moreover, those who investigate allegations of misconduct must know they are free to do their jobs and pursue their investigation wherever it may lead without any fear of retaliation.

Some of the most disturbing testimony at our last hearing was given by Senator Danforth, who told of two FBI agents who believed they had been retaliated against for their work on the Ruby Ridge investigation and the Waco investigation. At the heart of these management flaws is how the agency deals with those employees.

Senator Danforth said, "I do believe the FBI has an unwritten policy of doing nothing to embarrass the FBI. The agency has a

great deal of leverage over its agents and significant ability to punish ‘troublemakers,’ with its power of promotions and job assignments. Therefore I believe that there is a real reluctance on the part of most FBI employees to report wrongdoing. . . . The reality for an employee who loves his job is that there is no realistic protection from the isolation and rejection which can result from reporting wrongdoing within the organization or exposing it to criticism. . . . The consistent message from the Department of Justice and the FBI should be that careers in the agency can survive mistakes, because everyone makes mistakes, but careers cannot survive coverups. Candor must be the highest value at the FBI.” I couldn’t agree more with Senator Danforth. The Committee will hear first-hand accounts from current and retired FBI agents about their experiences.

In the Ruby Ridge report, almost 6 years ago, we observed that “FBI agents conducting internal reviews were not adequately insulated from the subjects of their review.” We noted instances of “friends reviewing friends’ conduct and the subjects of the reviews later sitting on the promotion boards of the very agents who reviewed their conduct.”

I think we are going to hear that this “good old boy” network has been allowed to persist. Some may find it surprising to learn that the final recommendations on punishment for those agents involved in the aftermath of Ruby Ridge were issued quietly and without fanfare. When? Almost 9 years later, in January 2001.

The decision was that no disciplinary action should be taken against any FBI agents involved in the Ruby Ridge matter beyond those lower-level employees already disciplined. The conclusion was contrary to the well-supported findings and recommendations of the Office of Professional Responsibility of the Department of Justice, as well as the Justice Management Division’s own Task Force on Ruby Ridge. They had recommended sanctions against four supervisory FBI agents.

The JMD decision disregarded most of the recommendations and acknowledged the allegations against only two FBI agents who had been found by the investigators to have failed to ensure the integrity of interview notes or to conduct a complete or adequate investigation of Ruby Ridge. Because the Assistant Attorney General for Administration was unwilling to ascribe improper motive to the employees, no discipline came out.

We are not trying to reopen old investigations, but we are showing that things have to be done differently. And we remember that the great majority of FBI agents bear no responsibility for any of the problems we have been discussing.

Former Agent John Werner, who will be testifying on our second panel, states that the majority of the members of the Senior Executive Service at the FBI are “sincere, dedicated law enforcement professionals,” and that his observations of improper influence and misconduct relate only to a minority. I agree with him. We shouldn’t forget the debt we owe to the FBI or the very thankless jobs that so many of them take on.

I would conclude with what Judge Webster said. He said that in the courtyard of the FBI there is this inscription: “The key to effective law enforcement is cooperation at all levels and with the sup-

port and understanding of the American people.” The purpose of these hearings is to restore the confidence of the American people that the FBI is living up to this motto. We want to make the FBI the best it can be.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Today, the Judiciary Committee is holding its second oversight hearing on the Federal Bureau of Investigation. Before I address the subject of today’s hearing, I want to note three significant developments concerning the FBI that have taken place in recent days. The first is that the President has announced his intention to nominate Robert S. Mueller to be the next FBI Director. I have met with Mr. Mueller, as I know several other Members of the Committee have, and I intend to proceed with his confirmation hearing expeditiously, after the President formally sends his nomination to the Senate.

The second important recent development concerns an issue that was at the heart of this Committee’s hearing last month: FBI oversight. Last Wednesday, the Attorney General issued an order redefining the jurisdiction of the Office of Inspector General to give it authority to investigate allegations of misconduct by employees of the FBI and the Drug Enforcement Administration. As the witnesses at our last hearing explained, the scope of the Inspector General’s authority over the FBI has been a source of recurring controversy that has made FBI oversight more difficult for many years. Although the Inspector General statute gives the Inspector General broad authority to investigate the FBI, various internal rules of Department of Justice have limited that authority. In 1992, then-Deputy Attorney General Terwilliger issued an order that generally gave the jurisdiction over attorneys and law enforcement personnel only to the Justice Department’s OPR. The Inspector General’s authority was broadened in 1994 by then-Attorney General Reno, who issued an order superseding the Terwilliger order and granting the Inspector General the authority to investigate FBI personnel when the investigation was specifically authorized by the Attorney General or by a Deputy Attorney General. While this was a big step in the right direction, it did not go far enough.

I commend Attorney General Ashcroft for his wise decision to remove the remaining restrictions on the Inspector General’s authority. I also acknowledge Senator Grassley for his efforts in helping to encourage this important reform. However, while the changing of the Justice Department’s internal rules is certainly a welcome development, I believe that we need to make this reform permanent by legislation. We should not leave matters in a position where the Inspector General’s important role in performing FBI oversight could once again be frustrated by the stroke of the pen by a future Attorney General.

The third development was yesterday’s announcement by the Attorney General about weapons and computers that are missing from the FBI’s inventory. This audit again underscores some of the management problems we are examining through these hearings and that we hope to help remedy, and we will discuss this latest example, and what it means, with our witnesses today.

In order for us to understand why the FBI has had the number of problems that it has in recent years, it is important to look at how it is managed. In recent months, we have seen a number of indications that the FBI’s management is badly in need of an overhaul. We see the results of management failures, for example, in the discovery violation in the Oklahoma City bombing case, which led to the delay in carrying out the court-ordered execution of Timothy McVeigh. We also see it in the FBI’s failure for more than 15 years to detect the espionage activities of former agent Robert Hanssen, who pleaded guilty to selling some of this country’s most sensitive classified information to the KGB.

The management problems at the FBI may stem in part from how the organization is structured. FBI Headquarters in Washington constantly struggles to stay abreast of developments in the FBI’s 56 field offices and 44 foreign Legal Attache or “Legat” offices and to ensure that each of these offices is following orders and procedures. It is often when field offices ignore or do not fully comply with orders from Headquarters that problems happen—for example, in the FBI’s belated production of documents in the Oklahoma City bombing case. We continue to await the outcome of the Justice Department’s Inspector General review of how this happened in the face of 16 separate orders from Headquarters for pre-trial production of these documents.

The May, 2000, report of the Attorney General's Review Team, headed by federal prosecutor Randy Bellows, on The Handling of the Los Alamos National Laboratory Investigation of Wen Ho Lee, dissected the relationship between FBI Headquarters and the Albuquerque, New Mexico, field office and found serious flaws, some of which stem from a fear on the part of lower-level FBI agents at Headquarters of being perceived as criticizing more senior agents in the field. While the full Bellows report remains classified, in response to a request from Senator Specter and myself, the Justice Department has provided the Committee with an unclassified version of the report. This report documents how the National Security Division became aware of the field office's "poor handling of the case," yet "took no effective measures to fix the problem, even when it was given an opportunity to do so. Instead, it simply attempted to run the case from FBI Headquarters, an approach that was unmanageable from the start and which would severely handicap the investigation." (Bellows Report, p. 4).

When, for example, two extra agents were sent to the field office to assist in the Wen Ho Lee investigation but were diverted to other investigations, the Assistant Director of the FBI's National Security Division was not informed. A Unit Chief in the same Headquarters Division explained that "it would have been 'impolitic' to advise [the Assistant Director] of the diversion. He said the 'culture' of the FBI is 'very intolerant' of that kind of reporting." (Bellows Report, p. 98). This Unit Chief told another supervisory agent that he should not "'stir the beans' because it would have been inappropriate to 'mess with a SAC's decision.'" (Id., at p. 99). He warned "that you don't get ahead in the FBI 'if you stab SACs in the back.'" (Id.). As a consequence, the problem of the two agents being diverted remained unresolved.

Periodic inspections provide a significant mechanism for FBI Headquarters to check on the progress of cases and communicate, in the form of "interrogatories," specific complaints to field offices about their handling of cases. Yet the Bellows Team uncovered some dirty laundry there, too. A supervisory agent involved in the Wen Ho Lee investigation at Headquarters said that "interrogatories are not, in reality, used as an opportunity to complain about a field office: 'We're never allowed to be candid in interrogatories.'" (Bellows Report, p. 161). This prompted appropriately strong criticism in the Bellows Report, which stated: "If true, if the FBI 'culture' does not encourage, indeed require, that FBI-HQ personnel be blunt and candid in interrogatories, this essentially eviscerates the value of the interrogatories. . . . The issue is [redacted] failure to avail itself of an institutional mechanism—the inspection process—which is specifically designed by the FBI to insure that all significant problems in a field office are identified and addressed in an inspection." (Id. at p. 161, *italics in original*).

The Bellows Report concluded that "[i]f the FBI 'culture' discourages 'full disclosure' in the interrogatories or interviews associated with the inspection process, that 'culture' needs to be altered. All FBI personnel should be advised that the FBI will not tolerate anything other than 'full disclosure' in the inspection process." (Bellows Report, p. 774). This recommendation is so patently obvious it is shocking that it had to be made. The challenge to the new Director and new management team he brings into the FBI will be to make sure it happens.

Even within FBI Headquarters, disputes between the National Security Division (NSD) and the Criminal Investigative Division (CID) over the Wen Ho Lee investigation appear to have slowed the investigation down. In a heavily redacted portion of the Bellows Report, we learn that concern over the effect of an espionage prosecution on the FBI Director's interest in opening a LEGAT in Beijing were a factor in the investigation. The Bellows Report summarizes "the stark choice" of concern to certain senior FBI agents "that it might come down to doing without Beijing legat or espionage prosecution. . . . Finally, this must be said: NSD permitted CID's admittedly legitimate concerns about [redacted] sensitivities to undermine a critical FBI investigation about [redacted] espionage." (Bellows Report, p. 183–84).

This is an area where we are lucky to have former Commissioner of the U.S. Customs Service, Raymond W. Kelly, here to talk to us about structural problems he encountered at that law enforcement agency and what he did about them.

Another key area of concern about FBI management is in the area of security and information technology. In a letter last month to Chairman Sensenbrenner of the House Judiciary Committee, former FBI Director Freeh conceded that the FBI's computer systems were "obsolete" and that its approach to planning and funding for improvements was "inadequate." At a briefing last week, the FBI told our Committee's staff that there are no less than 15 areas where FBI's internal security must be improved. We will be hearing today from Mr. Bob Dies, a former executive at IBM who has been hired by the FBI as an Assistant Director to take on the Herculean task of upgrading its information technology. Mr. Dies will tell us what he's discovered since he took on this job and how his efforts to upgrade the FBI's com-

puter systems are progressing. We will also hear from Mr. Ken Senser, who has recently been brought in from the Central Intelligence Agency to be a Deputy Assistant Director of the FBI in charge of internal security. Internal security at the FBI is obviously a major concern in the wake of the Hanssen case, and we appreciate Mr. Senser's helping to keep the Committee informed in this critical area.

A final management issue that our hearing will address is how the FBI handles its internal discipline. A well-managed law enforcement agency needs to deal appropriately with allegations of misconduct by its agents and employees. Further, it is important that the process be perceived as fair by both its employees and the American public at large. A perception that credible allegations of misconduct are being whitewashed, or that a double standard of discipline is being applied in which senior supervisors get lighter punishment than line agents for the same offenses, will erode public confidence and demoralize the agency's own employees. Moreover, those who investigate allegations of misconduct must know that they are free to do their jobs and pursue their investigation wherever it may lead, without fear of retaliation.

Some of the most disturbing testimony at our last hearing was given by Senator Danforth, who told of two FBI agents who believed that they had been retaliated against for their work on the Ruby Ridge investigation and the Waco investigation. In our second panel of witnesses, we will be hearing from those two agents, along with two of their colleagues. They will be giving us a unique insider's perspective on the FBI's internal disciplinary process.

The purpose of these hearings is not to re-hash old mistakes or to re-open old investigations. This is not a re-investigation of what happened at Waco, Texas. The review so ably conducted by former Senator Danforth is the definitive investigation of that matter. Nor are these hearings intended to be a re-investigation of what happened at Ruby Ridge, Idaho, since that matter was thoroughly reviewed by this Committee under the leadership of Senator Specter and Senator Kohl in 1995. Nevertheless, we are going to hear about both those events today. How the FBI handled the aftermath of both those tragedies can illuminate the management flaws that persist within the Bureau and must be corrected.

At the heart of these management flaws is how the agency deals with those employees who are tasked with examining the FBI itself. Senator Danforth identified this crucial problem in response to my written questions. He said:

"I do believe the FBI has an unwritten policy of doing nothing to embarrass the FBI. The agency has a great deal of leverage over its agents and significant ability to punish 'troublemakers,' with its power of promotions and job assignments. Therefore I believe that there is a real reluctance on the part of most FBI employees to report wrongdoing. . . . The reality for an employee who loves his job is that there is no realistic protection from the isolation and rejection which can result from reporting wrongdoing within the organization or exposing it to criticism. . . . The consistent message from the Department of Justice and the FBI should be that careers in the agency can survive mistakes, because everyone makes mistakes, but careers cannot survive coverups. Candor must be the highest value at the FBI."

The Committee will hear first-hand accounts from current and retired FBI agents about their experiences on the front-line of conducting internal investigations of the FBI.

A related issue is how, once an internal investigation has been completed, the FBI resolves the matter and, specifically, decides who is culpable and what the punishment, if any, should be. In the Ruby Ridge report filed by the Subcommittee on Terrorism, Technology and Government Information almost six years ago, we observed that "FBI agents conducting internal reviews were not adequately insulated from the subjects of their review." We further noted instances "of friends reviewing friends' conduct and the subjects of the reviews later sitting on the promotion boards of the very agents who reviewed their conduct." In short, we warned that "[t]his has created the impression that a small group of insiders review the conduct of the FBI, punishing lower level, 'outsider' FBI agents and protecting higher-level, inside-track FBI agents."

Unfortunately, we will hear that this "good old boy" network has been allowed to persist. Some may find it surprising to learn that the final recommendations on punishment for those agents involved in the aftermath of Ruby Ridge were issued quietly and without fanfare almost nine years after that 1992 tragedy, in January, 2001. The decision, made by the Justice Management Division of the Department of Justice over three years after being tasked to evaluate recommendations for discipline, was that no disciplinary action should be taken against any FBI agents involved in the Ruby Ridge matter beyond those lower-level employees already disciplined in January, 1995. This conclusion was contrary to the well-supported find-

ings and recommendations of the Office of Professional Responsibility of the Department of Justice as well as the Justice Management Division's own Task Force on Ruby Ridge. Those offices recommended sanctions against four supervisory FBI agents. JMD's Task Force also recommended that the discipline previously imposed on three lower-level agents be rescinded because of procedural defects in the original investigation and exculpatory information that had subsequently been developed.

Nevertheless, the JMD decision disregarded most of these recommendations and acknowledged the allegations against only two FBI agents, who had been found by the investigators to have failed to insure the integrity of interview notes or to conduct a complete or adequate investigation of Ruby Ridge. Yet, because the Assistant Attorney General for Administration was unwilling to ascribe improper motive to the employees, no discipline was imposed.

Again, our purpose is not to reopen old investigations, and fairness to those agents who were under investigation prohibits a more specific discussion of the case. The documents reflecting these decisions are not public. Nevertheless, the adjudication conducted in the Ruby Ridge investigation shows precisely why some have come to question whether there is a double standard among FBI agents on matters of internal discipline.

Of course, it is always important to remember that the great majority of FBI agents bear no responsibility for any of the problems we have been discussing. Former agent John Werner, who will be testifying on our second panel, states that the majority of the members of the Senior Executive Service at the FBI are "sincere, dedicated law enforcement professionals" and that his observations of improper influence and misconduct relate only to a vocal minority of the Senior Executive Service. We should never forget the debt that we owe to all of the FBI agents who do their jobs fairly and professionally and who risk their lives in service to this country.

The American people and this Committee owe a debt of gratitude to the courage of the agents who are with us to share their experiences and observations today. The thankless assignments they have accepted within the Bureau were taken and performed by them at considerable personal and professional cost. Their service to the nation and to the bedrock interests of the Bureau itself are in the best tradition selfless public service and of the bravery that is the centerpiece of the FBI emblem.

In answers to the written questions I submitted after our last hearing, Judge Webster made an interesting observation. He said that in the courtyard at the FBI headquarters in Washington, there is the following inscription:

"The key to effective law enforcement is cooperation at all levels and with the support and understanding of the American people."

The purpose of these hearings is to restore the confidence of the American people that the FBI is living up to this motto. Our purpose is to make the FBI the best that it can be.

Chairman LEAHY. What we are going to do this morning is we will interrupt for Senator Hatch when he is able to get here, but I am delighted that we have, first, Ray Kelly, who encountered a number of matters when he came into Customs after a long career in law enforcement.

Senator SCHUMER?

Senator SCHUMER. Mr. Kelly is a great New Yorker and I wanted to join you, Mr. Chairman, in welcoming another great New Yorker before this panel.

Chairman LEAHY. Well, thank you. I appreciate that. I have known Ray Kelly for a long, long time, wearing a number of different hats, including being with him in Haiti and spending a couple of days with him down there. We also have mutual friends that go back to his Marine days and my association with friends of the Marine Corps and my son's time in the Marine Corps.

Mr. Kelly?

**STATEMENT OF RAYMOND W. KELLY, SENIOR MANAGING
DIRECTOR, BEAR STEARNS, NEW YORK, NEW YORK**

Mr. KELLY. Thank you, Mr. Chairman. Thank you, Senator, for those kind remarks. Members of your Committee, thank you for your invitation to be here today.

I came to Federal law enforcement after a 30-year career in the New York City Police Department, and I also served in the United States Marine Corps. The one thing both organizations have in common is that they are very hierarchical. While both encourage initiative on the part of their front-line troops, the fact remains that both organizations insist on adherence to a strict chain of command. They also maintain tight spans of control.

For example, the span of control in the New York City Police Department would begin with sergeants and five police officers reporting to lieutenants, lieutenants reporting to captains, captains to inspectors, inspectors to chiefs throughout the top of the organization.

I mention this because when I came to Federal law enforcement, first as Under Secretary of the Treasury for Enforcement and later as Commissioner of U.S. Customs, I was struck by the relatively loose span of control and the horizontal structure of enforcement agencies in the Federal sector.

Where my municipal and Marine Corps experience was very hierarchical, Federal law enforcement tended to be more lateral. For example, when I arrived at Customs, there were 20 special agents-in-charge, scattered across the United States, 100 resident agent-in-charge offices, and 55 more attaches in 24 foreign countries, all reporting to one assistant commissioner in Washington. The ratio in that span of control was more than surprising; it was, in my judgment, unmanageable, certainly on a day-to-day basis. The result was that the investigative arm of the Customs Service was balkanized under the various special agents-in-charge. Management in Washington was often uninformed.

To correct this situation, we divided the country into three administrative regions—East, Central and West. The special agents-in-charge of each region had to report to a new director for each of the regions. Those three directors, in turn, reported to the assistant commissioner. Our attaches abroad were directed to report to a new deputy in the existing Office of Foreign Operations.

The result was a much more manageable span of control. The assistant commissioner in Washington could get a quick picture of what was happening nationally and internationally by talking to 3 people who reported to him, instead of over 40. Similarly, with three deputies, the assistant commissioner could execute and follow up on policy, making certain his orders were not only transmitted but also complied with. In addition, inspections on a much more frequent basis could be conducted.

With big, widely dispersed organizations, in my judgment, it is not enough for headquarters to send teams to the field to conduct periodic inspections every few years. There should be daily oversight, and a rational span of control allows that to happen.

The balkanization I described was not limited to the Customs Office of Investigations. It affected the Office of Field Operations as well, where Customs personnel were assigned to 301 ports of entry

located across the country. For a time, individual port directors tended to set their own policy. That led to the phrase “port-shopping” by brokers and others, who found that the rigor in which Customs regulations were being enforced varied from port to port.

A policy of “power to the ports” was encouraged for a time as managers tried to apply to the Federal Government the devolution of power that was becoming popular in American business. The problem is Federal law enforcement is not a business enterprise. Its employees are responsible for enforcing the law, not making sales quotas. They are armed and have authority to conduct personal searches, make arrests, and use deadly force.

That kind of authority demands tight spans of control, close supervision, a rigorous chain of command, and oversight. The lack of it caused problems besides port-shopping. Internally, the lack of consistently executed policy led to complaints of unevenness and favoritism in disciplinary procedures and promotions.

Discipline for the same transgression, for example, might be dispensed differently, depending on the region of the country or who an employee knew within the Service. We changed that by establishing an agency-wide disciplinary review board with rotating membership.

One of the problems Customs experienced with the public was inconsistency in the way in which passengers arriving at various international airports were subject to searches. Customs has broad authority to detain and search travelers, and did so. What was missing was a coherent policy that was closely supervised and uniformly adhered to. Once that policy was in place and closely supervised, the number of searches of law-abiding travelers plummeted and the number of seizures of narcotics and other contraband increased. The authority never changed. What changed was how we managed it.

I don’t mean to single out the Customs Service. It happens to be the Federal agency that I am most familiar with. As Under Secretary of the Treasury, I saw similar issues with the other Treasury enforcement bureaus. I realize that some of these management problems are inherent to the geographical reach of Federal law enforcement agencies.

Where none of the 40,000 police officers in the New York City Police Department are normally more than an hour or so away from headquarters, Federal law enforcement has thousands of agents scattered across multiple time zones, and even continents. That kind of geographic diversity imposes its own management problems. Management of such far-flung personnel and resources will tend to devolve to onsite middle managers unless strong leadership, supported by a workable management structure, exerts itself in Washington.

To help us know what was happening on a daily basis, we established a 24-hour operations center, to which all officers, national and around the world, were required to report significant events. The incidents would be briefed around the same table each morning at 8:30 a.m. to the headquarters executive staff. This way, my executive staff got a good snapshot of what was happening agency-wide and not just in their own corner of it.

The head of the agency must be persistent in demanding to know what is happening in the field and in making certain national policy is carried out there. Otherwise, power will devolve in a vacuum of leadership to the entrenched careerists in the field, where policy may be applied unevenly, if at all.

With the advantage of a 10-year term, however, the FBI Director is less prone to be frustrated by those who might try to resist his leadership by waiting him out in hopes of a change in administration. Congress may want to consider applying terms of office for the heads of other Federal law enforcement agencies.

Finally, I want to comment on one very important issue related to the management of any Federal law enforcement agency, any police agency for that matter, and that is integrity and the internal affairs function needed to protect it.

Internal affairs tends to get short shrift in law enforcement. Police critics often call for the function to be handled independently by an outside agency. Law enforcement executives often fail to give internal investigative components the attention and resources they need.

I believe that every law enforcement agency needs a robust internal investigative function within its ranks. While the inspectors general and other outside entities can play an oversight role, nothing is more effective in preventing and pursuing corruption within law enforcement than a credible internal affairs unit. It takes a good insider to catch a bad one, and toward that end internal affairs needs to be staffed by the best and brightest investigators available.

Service in internal affairs in an ideal world should be mandatory, with rotation through internal affairs as part of the promotion track. The head of internal affairs should report directly to the head of the law enforcement agency, not through a deputy, and he or she should report on a daily basis.

The internal investigative function will never be popular. That is why it is important that internal affairs is fully supported from the top, with total access to the head of the agency, staffed with the best of personnel and supported with the best of equipment.

An organization is only as good as the people who are recruited and trained to work for it. Federal law enforcement, and the FBI in particular, has a reputation for attracting highly skilled and highly motivated individuals. That continues to be true and it is a major plus for the FBI.

The challenge is not who to manage, but how to manage them, how to manage a large, far-flung workforce with a broad and complex law enforcement mission. That is a heavy lift for anyone. To lighten the load and manage effectively, I would recommend focusing on the four essentials that I have outlined today: first, impose a strict managerial hierarchy; second, maintain a tight span of control; third, inspect regularly to make certain policy is being implemented in the field; and, fourth, ensure integrity through a robust internal affairs program within the agency.

Thank you, Mr. Chairman, and I am available to answer questions.

[The prepared statement of Mr. Kelly follows:]

STATEMENT OF RAYMOND W. KELLY, SENIOR MANAGING DIRECTOR, BEAR STEARNS,
NEW YORK, NEW YORK

Mr. Chairman, members of the Committee, thank you for this opportunity to testify.

I came to Federal law enforcement after a 30-year career in the New York City Police Department. I also served in the United States Marine Corps. The one thing both organizations have in common is that they are very hierarchical. While both encourage initiative on the part of their front line troops, the fact remains that both organizations insist on adherence to a strict chain of command. They also maintain tight spans of control. For example, the span of control in the New York City Police Department begins with a sergeant and five police officers, lieutenants reporting to captains and so on through to the very top ranks of the organization.

I mention this because when I came to Federal law enforcement, first as Under Secretary of the Treasury for Enforcement and later as Commissioner of U.S. Customs, I was struck by the relatively loose span of control and the horizontal structure of enforcement agencies.

Where my municipal and Marine Corps experience was very hierarchical, Federal law enforcement tended to be more lateral. For example, when I first arrived at Customs, there were 20 Special Agents in Charge scattered across the United States, 100 resident agent in charge offices and 55 more attaches in 24 foreign countries—all reporting to one assistant commissioner in Washington. The ratio in that span of control was more than surprising. It was unmanageable; certainly on a day-to-day basis. The result was that the investigative arm of the Customs Service was number of searches of law-abiding travelers plummeted, and the number of seizures of narcotics and other contraband increased.

Balkanized under the various Special Agents in Charge. Routin, centralized management in Washington was often weak and uninformed. To correct the situation, we divided the country into three administrative regions: East, Central and West. The Special Agents in Charge in each region had to report to a new director for each of the regions. Those three directors, in turn, reported to the assistant commissioner. Our attaches abroad were directed to report to a new deput in the existing office of Foreign Operations.

The result was a much more manageable span of control. The assistant commissioner in Washington could get a quick picture of what was happening nationally and internationally by talking to three people who reported to him, instead of over 40. Similarly, with three deputies, the assistant commissioner could execute and follow up on policy, making certain his orders were not only transmitted, but also complied with. In addition, inspections on a much more frequent basis could be conducted.

With big, widely dispersed organizations, it is not enough for headquarters to send teams to the field to conduct periodic inspections every few years. There should be daily oversight. And a rational span of control allows that to happen.

The balkanization I described was not limited to the Customs Office of Investigation. It affected the Office of Field Operations as well, where Customs personnel were assigned to 301 ports of entry located across the country. For a time, individual port directors tended to set their own policy. That led to "port shopping" by brokers and others who found that the rigor in which Customs regulations were being enforced varied from port to port.

This policy of "power to the ports" was encouraged for a time, as managers tried to apply to the Federal government the devolution of power that was becoming popular in American business.

The problem is Federal law enforcement is NOT a business enterprise. Its employees are responsible for enforcing the law, not making sales quotas. They are armed and have authority to conduct personal searches, make arrests and use deadly force.

That kind of authority demands tight spans of control, close supervision, regorous chain of command and oversight.

The lack of it caused problems besides port shopping.

Internally, the lack of consistently executed policy led to complaints of unevenness and favoritism in disciplinary procedures and promotions.

Discipline for the same transgression, for example, might be dispensed differently depending on the regions of the country or whom an employee knew within the Service. We changed that by we establishing an agency-wide Disciplinary Review Board with rotating membership.

One of the problems Customs experienced with then public was inconsistency in the way in which passengers arriving at various international airports were subjected to searches. Customs has broad authority to detain and search travelers, and did so. What was missing was a coherent policy that was closely supervised and uni-

formly adhered to. Once that policy was in place and closely supervised the number of searches of law-abiding travelers plummeted, and the number of seizures of narcotics and other contraband increased.

The authority never changed. What changed was how we managed it.

I don't mean to single out the Customs Service. It happens to be the Federal agency I'm most familiar with. As Under Secretary of the Treasury, I saw similar issues with the other Treasury enforcement bureaus.

I realize that some of these management problems are inherent to the geographical reach of Federal law enforcement agencies.

Where none of the 40,000 police officers in the New York City Police Department is normally more than an hour or so away from headquarters, Federal law enforcement has thousands of agents scattered across multiple time zones and even continents.

That kind of geographic diversity imposes its own management problems.

Management of such far-flung personnel and resources will tend to devolve to on-site middle managers unless strong leadership, supported by a workable management structure, exerts itself in Washington.

To help us know what was happening on a daily basis, we established a 24-hour operations center to which all offices national and around the world were required to report significant incidents.

The incidents would be briefed around the same table each morning at 8:30 a.m. to headquarters executive staff. This way, my executive staff got a good snapshot of what was happening agency-wide and not just to their corner of it.

The head of the agency must be persistent in demanding to know what is happening in the field and in making certain national policy is carried out there.

Otherwise, power will devolve in a vacuum of leadership to the entrenched careerists in the field, where policy may be applied unevenly, if at all.

With the advantage of a 10-year term, however, the FBI director is less prone to be frustrated by those who might try to resist his leadership by "waiting him out" in the hopes of a change in administrations. Congress may want to consider applying terms of office for the heads of other Federal law enforcement agencies.

Finally, I want to comment on one very important issue related to the management of any Federal law enforcement agency; any police agency, for that matter. And that is integrity, and the internal affairs function needed to protect it. Internal affairs tends to get short shrift in law enforcement. Police critics often call for the function to be handled independently by an outside agency. Law enforcement's executives often fail to give internal investigative components the attention and resources it needs. I believe that every law enforcement agency needs a robust internal affairs function within its ranks. While the inspector generals and other outside entities can play an oversight role, nothing is more effective in preventing and pursuing corruption within law enforcement than a credible Internal Affairs Unit. It takes a good insider to catch a bad one. And, toward that end, internal affairs needs to be staffed by the best and brightest investigators available. Service in internal affairs ideally should be mandatory, with rotation through internal affairs as part of the promotion track. The head of internal affairs should report directly to the head of the law enforcement agency—not through a deputy—and he or she should report on a daily basis. The internal affairs function will never be popular. That's why it is important that internal affairs is fully supported from the top, with total access to the head of the agency, staffed with the best of personnel and supported with the best of equipment.

An organization is only as good as the people who are recruited and trained to work for it. Federal law enforcement, and the FBI in particular, has a reputation for attracting highly skilled and highly motivated individuals. That continues to be true, and it is a major plus for the FBI. The challenge is not who to manage, but how to manage them. How to manage a large, far-flung workforce with a broad and complex law enforcement mission. That's a heavy lift for anyone. To lighten the load and manage effectively, I would recommend focusing on the four essentials I've outlined today: First: Impose a strict managerial hierarchy. Second: Maintain tight span of control. Third: Insure integrity through a robust internal affairs program within the agency. Thank you, and I'll be happy to try to answer any of your questions.

Chairman LEAHY. Thank you very much, Mr. Kelly.

Mr. Dies, I realize I mispronounced your name earlier and I apologize for that. I am delighted to have you here. You have spent, I believe, a year now with the FBI.

Mr. DIES. A year this week.

Chairman LEAHY. A year this week. Aren't you lucky to get the chance to be here to celebrate that year's anniversary?

Go ahead, please.

STATEMENT OF BOB E. DIES, ASSISTANT DIRECTOR, INFORMATION RESOURCES DIVISION, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Mr. DIES. Thank you. I have prepared a statement for the record. I can read it or you can accept it and I will comment on it.

Chairman LEAHY. Why don't you comment on it and we will put the whole statement in the record? Please comment on it.

Mr. DIES. As you mentioned, I was with IBM for 30 years. I retired—

Senator SESSIONS. Mr. Chairman, has his testimony been made a part of the record?

Chairman LEAHY. It will be part of the record, yes.

Senator SESSIONS. I just haven't received it. I don't think I have it.

Chairman LEAHY. I beg your pardon?

Senator SESSIONS. I don't think I have it. Do others have it?

Chairman LEAHY. I had assumed we had it and I apologize for that.

Mr. DIES. I am happy to go through it, if you wish.

Chairman LEAHY. I had assumed it was already in here.

Senator SESSIONS. You know, sometimes we have people who are slow to get their statements in.

Chairman LEAHY. I am advised by the staff it arrived just this morning and we just barely got it.

Senator SESSIONS. Well, that is a problem. I think if we have a rule that it is supposed to be in, Mr. Chairman.

Chairman LEAHY. It was supposed to have been in before now.

Senator SESSIONS. Well, anyway, I will listen carefully.

Chairman LEAHY. To help Senator Sessions, why don't you give the statement, Mr. Dies? Give the statement as you have prepared it, in full.

Mr. DIES. OK, good morning, Mr. Chairman. As you said, I have just completed 1 year with the FBI after a career in the private sector.

Former Director Freeh, I believe, understood that the FBI technology infrastructure was not modern, and he asked me to join me specifically to review what they had, prioritize the problems, recommend the fixes and, if possible, begin implementing the fixes in an orderly fashion.

In the past decade, the Bureau has made significant investments in technology, but for certain programs specifically in support of State and local law enforcement with systems such as the Fingerprint Identification System, the National Crime Information System, which, of course, reports whether a car is stolen or an individual is a felon, and so forth.

The FBI has also invested in technology for specific crimes that are of national interest, such as crimes against children in a program they call Innocent Images, and in DNA data bases for violent offender notification, known as CODIS, and the protection of our

economic and physical infrastructure, known as the National Infrastructure Protection Center. What we need to do now is invest in the tools and support to satisfy the basic investigative needs of our special agents and their support personnel.

Let me give you a quick overview of what I will be testifying to this morning. One, the FBI knows that its information technology needs repair. Two, this past year we have initiated some changes in programs and management to begin correcting the basic IT problems, technology problems, and to position the FBI for the future. That effort is a foundation program we call Trilogy.

Three, Congress has supported us in the Trilogy effort both with funding and with active and thoughtful attention by this and other Committees, for which, as someone new to Government services, I am personally grateful.

Four, we are on schedule with costs and we will implement the Trilogy program as authorized. Fifth, in light of recent events, we need to improve the FBI's security operations and other areas such as document management.

Finally, for security, we have created a single point of contact and accountability reporting to the Deputy Director, and we have recruited a career security executive, with the help of the CIA—Ken Senger, to my left. He will speak after I finish.

While we have taken steps to begin repairing our IT systems, the systems are, in fact, in need of significant repair and modernization. So I appreciate your counsel and support in those activities.

The current situation: The FBI's job, of course, is investigating. Technology and computers are supposed to be tools for the FBI to use to accomplish its job. The Bureau's future ability to deter and prevent crimes requires the use of modern information technology.

For a variety of reasons, the FBI information technology has had no meaningful improvement in well over 6 years, and parts of the system are much older. More than half of the Bureau's desktops are between 4 and 8 years old. They cannot run today's basic software, which means many of the agents accessing FBI data can't use the basic ease-of-use features—point and click, using a mouse, et cetera—and the frustration that creates is enormous.

The majority of our smaller offices are connected to our internal network that speeds the equivalent of a 56K modem, which is, for those that use technology, a speed less than many of your children would use at home to connect to the Internet.

The agents themselves are unable to electronically store much of the information that they have about their case in our investigative data bases, including photographs, graphical information and tabular data. Fundamentally, at the dawn of the 21st century, the FBI is asking its agents and support personnel to do their jobs without the tools other companies use or that you and I would use at home.

Our Trilogy project is a program you approved. It is a 36-month program to do three things. First, in the network side, communications between our facilities, it will, in fact, provide high-speed links between the FBI locations. Second, we will replace the hardware and software within each office so that the employee is, in fact, linked at their desk to the information in the FBI. Finally, we have identified five specific applications which we will significantly en-

hance so that they can, in fact, do their casework in a more orderly and productive manner.

Trilogy is structured to enhance the investigative ability of the agents and support personnel. It will provide the basic resources and fundamental tools the FBI needs to support their investigations. It will provide basic relief for the shortcomings I just mentioned. It is a necessary foundation upon which the other technologies can be added. We have awarded these contracts and the programs are in process.

The Trilogy program enables us to have a workable system. It will not by itself give the FBI a world-class, state-of-the-art system. It does give us a foundation upon which we can build and it is the necessary first step toward state-of-the-art. The other components of a state-of-the-art system cannot be implemented without, in fact, the foundation. You can't build a house without a firm foundation, and for practical purposes Trilogy is that foundation.

We will have more to do than just the Trilogy project. We need to provide our investigative teams with collaborative tools, with better communication with other law enforcement agencies, with the means to know the collective experiences of the whole FBI so that they can always use the best practices that have been developed. We are going to also need to work on the basic plumbing, the financial, accounting and personnel systems that were put in place in the FBI in the 1980's.

However, our most pressing need has come to light as a result of the investigative work done to bring about the arrest of Robert Hanssen. Our security operations must be strengthened. Improved security is the most pressing need and the major focus area since the arrest of Robert Hanssen.

The FBI has been active in working on its security problems. The Director created a task force in March of assistant directors to review FBI policies and procedures. He asked me to lead that task force, and by April we had made four specific recommendations that I would like to comment on.

First, the task force recommended establishing overall accountability for security in a single place, having a single functional responsibility, someone who knows all of the required piece parts to the security puzzle. This has been done. The Security Program Office has been reorganized. We have asked Ken Senser, an 18-year career security and countermeasures executive from the CIA, to lead that operation and cause the change required.

Secondly, security encompasses more than just the technology it uses. You need to have accountability. You need to have procedures and policies and people in charge and accountable for implementing the procedures and policies. The policy management system to go with the new security system is being addressed and they have agreed to put it in place.

Third, we found from the Department of Defense that a primary deterrent to the insider threat is, in fact, education and awareness of the basic people within the Bureau. So an aggressive program for education and training was begun.

Finally, the task force recommended that we work with the new security program executive, Mr. Senser in this case, to properly

prioritize, rank and identify the changes which had to be made Bureau-wide for the security program to be effective.

The information used for these policies and procedures is being developed as rapidly as possible, with the constraint of getting it right. Proposed solutions will be structured to incorporate additional recommendations that may come from the Webster Commission. However, it is prudent for us not to wait for the Webster Commission final report before we begin.

In summary, our infrastructure today for technology is in need of serious repair and our approach to IT planning and funding, as you pointed out, Mr. Chairman, has been less than adequate. The infrastructure upgrade program which we call Trilogy is a significant first step, but it is a first step of a series of steps that need to be taken.

Recent public events clearly indicate a need to quickly go beyond the infrastructure with Trilogy and incorporate state-of-the-art IT security processes and a world-class records management system. Those would be our first two additional priorities. The needs for other systems would have to wait on those.

Such an effort requires continual commitment to change at the Bureau, and although I have only been there for a year, I believe the Bureau can make those changes, if asked. Such an effort also requires a continual commitment from the Senate and from the House to support us in the required investments.

Mr. Chairman, I appreciate the opportunity to address the Committee. I look forward to your continued interest, and with that I would like to introduce Ken Senser, who, as I said, is the CIA executive who was detailed to the FBI to lead these security changes.

[The prepared statement of Mr. Dies follows:]

STATEMENT OF BOB E. DIES, ASSISTANT DIRECTOR, INFORMATION RESOURCES
DIVISION, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Good Morning, Chairman Leahy, Senator Hatch and other members of the Committee. My name is Bob Dies. And I have just completed one year with the FBI, after a career in the private sector. Former Director Freeh understood that the FBI infrastructure was not modern, and he asked me to join the Bureau to review the problems, prioritize the requirements, and begin implementing the necessary changes in an orderly fashion.

In the past decade, the Bureau has made significant investments in technology for programs in support of state and local law enforcement agencies, such as fingerprint identifications (known as IAFIS), the National Crime Information Center (known as NCIC 2000) and national gun checks (known as NICS). The FBI has also invested in technology for specific programs of national priority, such as crimes against children (known as Innocent Images), DNA databases for violent offender identification (known as CODIS), and the protection of our economic and physical infrastructure (known as the National Infrastructure Protection Center, or NIPC). What we need to do now is invest in the tools and support to satisfy the basic investigative needs of all our Special Agents and all their support personnel.

OVERVIEW

Let me provide you a quick overview of what I will be testifying to this morning:

1. The FBI knew that its Information Technology (IT) needed repair.
2. This past year we have initiated some changes in programs and management to begin correcting the basic IT problems and to position the FBI for the future. Our effort has as its foundation a program we have named Trilogy.
3. The Congress has supported us in this Trilogy effort, both with funding and with the active, thoughtful attention by this Committee as well as oth-

ers, for which, as someone new to government service, I am personally grateful.

4. We are on schedule and within costs to implement the Trilogy program improvements you authorized.

5. In light of recent events, we need to improve the FBI security operations and other areas, such as document management.

6. For security, we have created a single point of accountability, reporting to the Deputy Director and recruited a career security executive, Ken Senser, to run it. He has identified specific security enhancement initiatives needed to improve our security. He will speak more fully about security after my statement.

While we have taken steps to begin repairing our IT systems, these Systems are in need of further modernization beyond that of Trilogy. And so again, we are in need of your good Counsel and your support.

CURRENT SITUATION

The FBI's job is investigating. Technology and computers are supposed to be tools the FBI uses to accomplish its job. The Bureau's future ability to deter and prevent crimes requires the use of modern information technology.

For a variety of reasons, the FBI information technology has had no meaningful improvements in over 6 years. Some parts of our system are much older:

- More than 13,000 of our desktops are 4 to 8 years old. They cannot run today's basic software. This means that many Agents accessing basic FBI data cannot use basic "ease of use" features that your teenagers have enjoyed for years, such as using a mouse to move around the screen. The productivity loss and frustration that result are enormous.
- The majority of our smaller offices are connected to our internal network at speeds equivalent to a 56KB modem—a speed less than many individual Internet users have at their homes.
- Agents are unable to electronically store much of investigative information into our primary investigative databases, including photographs, graphical and tabular data.

Fundamentally, at the dawn of the 21st century, the FBI is asking its Agents and support personnel to do their jobs without the tools other companies use or that you may use at home on your system.

WHAT TRILOGY IS

The Trilogy program you approved is the FBI's foundational 36-month program to upgrade the infrastructure technologies throughout the FBI. It consists of 3 components:

- *Network.* High-speed connections linking the offices of the FBI.
- *Information Presentation.* Hardware and software within each office to link each employee at their desk to the entire FBI.
- *User Applications.* Several user-specific software tools to enhance each Special Agent's ability to organize, access and analyze information.

Trilogy is structured to enhance the investigative ability, of Agents and support personnel. It will provide the basic resources and fundamental tools the FBI needs to support investigations. Trilogy will provide basic relief for the shortcomings I just mentioned. Trilogy is a necessary foundation upon which other technology can be added.

We have awarded contracts to implement both parts of our Trilogy program, and all of us are anxious to begin seeing the results.

WHAT TRILOGY IS NOT

The Trilogy Program enables the FBI to have workable system of information technology resources. Trilogy will not by itself give the FBI a world-class, state-of-the-art system.

Trilogy gives the FBI a foundation upon which it can build. Trilogy is the necessary first step toward state-of-the-art. The other components of a state-of-the-art system cannot be implemented without first implementing critical parts of Trilogy. You cannot build a house without first pouring the foundation. Trilogy is that foundation. As that foundation is being built, we can and should begin work on the follow-on components necessary to get the FBI more competitive.

IMPROVED SECURITY

We have much more to do than just Trilogy. We need to provide our investigative teams collaborative tools, better communications with other law enforcement agencies, and the means to know the collective experiences of the whole FBI, so they can always use the best practices of the FBI.

We also need to work on the basic "plumbing", the financial, accounting and personnel systems that we first put in place in the 1980's.

However, our most pressing need has come to light as a result of the investigative work done to bring about the arrest of Robert Hanssen. Our security operations must be strengthened.

Improved security is the most pressing need and a major focus area since the arrest of Robert Hanssen. The FBI has been active in improving its security. The Director created a taskforce last March of Assistant Directors to review FBI policies and procedures, and make recommendations. It made recommendations in April:

1. This taskforce recommended establishing overall accountability for security in one place, having a single function responsible for knowing all the pieces to the security
2. Security encompasses more than the technology it uses. Given the establishment of a overall single accountability function, it is time to tighten the security policy management system. The foundation for a good security program is to have sound policies in place, and to enforce them. Policy and procedures must be established, against which technology can be introduced to enforce and monitor.
3. This taskforce recommended immediate investment in training and education on security throughout the Bureau.

This taskforce recommended it assist the Security Program in prioritizing the areas necessary to get us where we should be on security. Ken Senser has identified several areas of attention for improvements. Ken will discuss these in a few minutes.

The information used for these policies and procedures will be developed as rapidly as possible, within the constraint of first getting it right. Any proposed solutions will be structured to incorporate additional recommendations that may come from the Webster Commission. However, we are not waiting for those recommendations before taking meaningful actions to enhance FBI data security.

SUMMARY

Today, our IT infrastructure is in need of repair and our approach to IT planning and funding has been less than adequate. Our IT infrastructure upgrade program, "Trilogy", represents the significant step in what we believe should be a continuing effort to keep pace with technology changes and to stay ahead of increasingly IT-sophisticated criminals.

Recent public events clearly indicate a need to quickly go beyond Trilogy's infrastructure plan to incorporate a state-of-the-art IT security process and a world-class records management system. Those would be our first two priorities. We can then turn our attention to modernizing and integrating the Bureau's remaining investigative, administrative and financial systems. Those needs for those systems indicate that we should prioritize first on other investigative systems followed by the administrative and financial systems.

Such an effort requires a continual commitment to change that has been difficult for the FBI culture in the past; although I am new; I believe the Bureau is up to this challenge. Such an effort also requires a continual commitment from Congress to support and encourage the changes.

Mr. Chairman, I appreciate the opportunity to address this Committee. I look forward to your continued interest in our efforts, and your thoughtful advice on how we can best improve the technology systems in the FBI. Thank you.

Chairman LEAHY. Mr. Senser, we are delighted to have you here. Your whole statement, which I understand we do have, will be placed in the record. I would ask you if you might summarize that, with a special emphasis on the area of concern that many of us have expressed, both Republicans and Democrats on this Committee, that security is not adequate at the FBI to be handling some of these very, very sensitive especially espionage cases or terrorism cases.

So, Mr. Senser, it is over to you and I appreciate you being here.

STATEMENT OF KENNETH H. SENSER, ACTING DEPUTY ASSISTANT DIRECTOR, SECURITY PROGRAMS AND COUNTER-MEASURES, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Mr. SENSER. Good morning, Chairman Leahy and Senators. I do appreciate the opportunity to address the very important matter of reviewing and transforming the FBI's security program in order to transform it into a world-class operation that is capable of addressing the formidable threats facing the FBI today.

This review process actually began in late 1999 and, after the arrest of Robert Hanssen, accelerated. The recent arrests of Hanssen and of James Hill in Las Vegas should leave no doubt in anyone's mind that there are committed adversaries that have both the intent and capability to do serious harm to the FBI's security and to the interests of the United States.

The FBI is an extremely valuable target for a wide variety of opponents who are interested in interfering with investigations, compromising sensitive information, and also physically harming our employees. For this reason, today I will provide only a very general statement so as not to provide a detailed road map for any persons who are interested in actually doing harm to the interests of our country.

Suffice it to say that we have done a very detailed review of the FBI's security program and, as I will outline, we have identified a number of focus areas as well as 15 specific categories of enhancements that need to be either bolstered, redesigned, or in some cases established for the first time.

I am available, of course, to speak in a closed session to go into the details of both the problem areas as well as the focus areas, and have provided a more-depth briefing to your staffs about the areas being taken.

Chairman LEAHY. In fact, I might note, Mr. Senser, I have read some of the classified material in here. It will be necessary at some time, and we will do it at a time that works best for the most Senators, to have a classified briefing in a closed-door session.

Go ahead.

Mr. SENSER. As Mr. Dies already described, Director Freeh established the assistant director task force and that task force had made four recommendations for immediate action. I am the result of one of those recommendations. In late April, I was selected to lead the total transformation of the FBI security program, as well as to oversee its day-to-day operations.

As mentioned, I am a senior intelligence service officer that is detailed to the FBI from the CIA. My 18-year career with the Agency has been exclusively focused in the area of security and I have had assignments in a number of different disciplines of security, to include personnel, physical, technical, and protective security.

The original purpose of my detail assignment, which actually began in October 1999, was to serve as an adviser and a deputy to the FBI security programs manager. That 15-month time period between my initial assignment and the arrest of Robert Hanssen gave me a unique opportunity to view the FBI security program through the lens of an outsider. Additionally, as I will mention, I

have also brought in other outsiders from the intelligence community to help us in this transformation of the FBI program.

As I said, in the late 1999, early 2000 timeframe, we initiated a self-assessment of the security program. There was clearly a recognition that the program was fragmented and was dispersed across many different divisions at the FBI. It lacked an integrated vision and security initiatives were often poorly coordinated, inefficient and not as effective as possible. Additionally, seven specific areas within the program were identified for more intense focus.

The security program developed a program plan in order to address these deficiencies, and various management and operational processes were either initiated or modified in order to improve the delivery of security services. Also, as a result of this review, Deputy Director Pickard in May 2000 established the FBI Security Council in order to facilitate the development of an integrated and unified strategic security vision for the FBI.

In the wake of Robert Hanssen's arrest on espionage charge, as you all know, Director Freeh implemented a number of immediate actions, one of which was asking Judge Webster to begin his review of the security program and to recommend improvements. In addition, there were a number of other interim security enhancements started; specifically, a process for a more enhanced review of our automated case support system and the access that people had to sensitive files in that system.

We have initiated a limited expansion of our polygraph program and we have implemented other measures that are designed to elevate the status of security within the FBI and to begin the process of changing the security culture at the FBI, which is imperative.

Additionally, as I mentioned, there was a considerable effort to bring in support from across the intelligence community. We now have officers detailed from CIA and the National Security Agency, and they are helping us to develop a robust security education and awareness program, which is one of the best investments an agency can make in terms of improving their security program. We are also reviewing the handling, storage and processing of sensitive compartmented information, and working to establish a professional security cadre at the FBI.

As far as the future, the seven focus areas that I have mentioned where we are concentrating our effort and were developed actually prior to the Hanssen arrest have led to a detailed, comprehensive and integrated security enhancement program that contains many initiatives designed to address those focus areas. Nothing we have discovered to this point subsequent to Hanssen's arrest would change the need for the security enhancements that we have identified.

Additionally, the enhancements have been prioritized in an order that we believe reflects the seriousness of the gaps or focus areas that need to be addressed. Now, while these have been prioritized, it is important to understand that we can't pick and choose. We believe because of the interdependence of these enhancements that this should be looked at systematically as an integrated program.

Additionally, it is important to realize that these changes are going to take some time. The recommendations and the additional deficiencies that we may identify as our review continues and the

reviews of Judge Webster and the Department of Justice Inspector General, will most likely mean that other enhancements will be proposed. So the plan that we have is a very dynamic plan and it is something that as of today we believe is the best approach for addressing these focus areas.

In summary, no security program can absolutely prevent a trusted insider from deciding to compromise the Nation's secrets. What we intend to do is to develop a program that provides a significant level of deterrence so that those persons who are thinking logically may think twice about the decision to spy, and also to have a system that, if somebody does decide to compromise information, quickly identifies the individual and also minimizes the damage that may occur as a result of the compromise.

[The prepared statement and an attachment of Mr. Senser follow:]

STATEMENT OF KENNETH H. SENSER, ACTING DEPUTY ASSISTANT DIRECTOR, SECURITY PROGRAMS AND COUNTERMEASURES, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Good morning, Chairman Leahy, Senator Hatch and other members of the Committee. I am pleased to appear this morning to discuss the very important matter of the review of the FBI Security Program and its transformation to a world-class operation capable of addressing the formidable threats facing the Bureau, a process that began in late Fall 1999 and accelerated after the arrest of Robert Hanssen. The recent arrests of Hanssen and James Hill should leave no doubt that there are committed adversaries with the intent and capability to harm the interests of the FBI and the United States. As the premier domestic agency conducting criminal, counterintelligence, and counterterrorism investigations, the FBI is an attractive target for a wide variety of opponents who continuously strive to impede investigative operations, obtain sensitive information, and initiate and implement reprisal actions against Bureau personnel or facilities. For this very reason, the details I provide in this public briefing will be very general to prevent outlining a roadmap for those persons intent on harming our country's interests. Suffice it to say, that we have conducted a detailed analysis and, as I will outline, identified and began addressing 15 categories of security areas that need to be bolstered, redesigned or, in some cases, established for the first time. I am available to present, in a closed session, a more substantive description of both those areas of the FBI Security Program that require intense focus and the detailed enhancement plan we have formulated to improve the Bureau's security posture. Your staffs have received an in-depth briefing of the problem areas identified and the actions being taken.

BACKGROUND

In late March 2001, Director Freeh took a number of internal security enhancement actions to include the appointment of a task force of Assistant Directors (ADs) to ensure the complete identification and effective implementation of a number of interim security enhancements begun shortly after Hanssen's arrest. Director Freeh also charged this task force, chaired by Bob Dies, AD Information Resources Division, with identifying and implementing any other interim changes that may be appropriate to enhance the FBI's Security Program and are sufficiently urgent so as to not await the outcome of either Judge Webster's review or that of the Department of Justice Inspector General.

In mid-April 2001, the security task force concluded that the FBI as a foundation for a robust internal security program must have a single executive manager responsible and accountable for the entire security "enterprise". The existing security program function was fragmented throughout a number of different divisions and there was nobody overseeing the various security "puzzle pieces". The initial recommendation of the task force to Deputy Director Tom Pickard was that the existing security program be separated from the National Security Division as a stand-alone entity, reporting to the Deputy Director, and that an executive manager be identified to specifically direct and be accountable for the security program. The task force also recommended that a formal process be established to consistently establish, implement, technically support, enforce, and educate personnel regarding

security policy. Deputy Director Pickard and Director Freeh immediately adopted these recommendations.

I was then selected to lead the total transformation of the FBI's Security Program, as well as, oversee its day-to-day operations. I am a Senior Intelligence Service officer detailed to the FBI from the Central Intelligence Agency (CIA). My 18-year career with the CIA has been exclusively within the security field and I have served assignments in the disciplines of personnel, technical, physical, and protective security. The original purpose of my detail assignment, initiated in October 1999, was to serve as a deputy and advisor to the FBI Security Programs Manager. The 15 months between the start of my detail assignment and the arrest of Hanssen gave me the unique opportunity to view the FBI's security apparatus using the lens of an "outsider". As I will mention later, other outside experts have been detailed to the FBI to assist in this critical endeavor.

My responsibilities include identifying the necessary security processes ("puzzle pieces") and ensuring that each one has an "owner". The process owners will develop the security policy statements and other supporting documentation which will require the approval of at least two FBI executives, one of which will always be mine, before final review and approval by the Deputy Director or Director.

BASIC SECURITY

An effective security program utilizes the principles of risk management. It is impractical and cost prohibitive to attempt to remove all risk from operations. Risk management is the process of selecting and implementing countermeasures to achieve an acceptable level of risk at a reasonable cost. Applying risk management within the security discipline involves:

- The collection and evaluation of accurate and detailed information pertaining to:
- The nature and value of assets being protected.
- The degree of a specific type of threat.
- The extent of the related vulnerabilities.
- The identification and evaluation of risks.
- A cost-benefit analysis of countermeasures to mitigate specific selected risks.

When countermeasures are applied to mitigate the risk, they are done so in a layered manner. These layers, or "rings of security", are constructed from the outermost perimeter to the asset itself. Countermeasures must be integrated and considered in a systems approach. To do otherwise potentially allows the adversary to identify the vulnerabilities that were not properly addressed, thereby negating the positive effect of the countermeasures that were applied.

PRE-HANSSEN SECURITY REVIEW

In early 2000, the Security Program initiated a self-assessment of its Program. There was a recognition that the Program was fragmented and dispersed across several different divisions. It lacked an integrated vision and security initiatives were often poorly coordinated, inefficient, and not as effective as possible. Additionally, seven areas within the Program requiring greater focus were identified. The Security Program established a Program Plan designed to address these deficiencies. Various management and operational processes were initiated or modified to improve the delivery of security services.

As a result of this review, Deputy Director Pickard established the FBI Security Council in May 2000 to facilitate the development and maintenance of a unified, strategic security vision. The purpose of the Council was to address Bureau-wide operational and policy issues that impact the FBI Security Program. The Council discussed a number of issues, to include; the status of FBI efforts to certify and accredit its information systems; strategies to improve information assurance; and options for consolidating responsibilities in various areas, such as, communications security and background investigations.

POST ARREST ACTIONS

In the wake of the arrest of Robert Hanssen on espionage charges, Director Freeh asked Judge William H. Webster to conduct a thorough review of the FBI's internal security functions and procedures and to recommend improvements. As a former FBI Director, CIA Director, and Director of Central Intelligence, Judge Webster is, of course, uniquely qualified to undertake this review. Judge Webster has assembled an impressive team of highly credentialed individuals to assist him in conducting

this review. Those members are: Clifford L. Alexander, Jr., Griffin B. Bell, William S. Cohen, Robert B. Fiske, Jr., Thomas S. Foley, and Carla A. Hills. The FBI is committed to providing Judge Webster and his team complete and timely access to FBI records, personnel, and resources to complete this task.

Judge Webster has also established a team of investigative attorneys to assist in this review. Those attorneys are currently conducting interviews and reviewing documents in order to formulate recommendations to improve FBI security policies and procedures. We welcome their recommendations and are committed to implementing them as expeditiously as possible. I maintain regular contact with representatives of the review team to keep them informed of proposed security enhancement initiatives.

The following interim security enhancements have been initiated:

Enhanced Computer Audit Procedures. Some of the FBI's most sensitive information is contained in electronic case files in the Automated Case System. Access is determined both by one's assignment and restrictions placed when the case is opened or data entered.

Director Freeh instructed our personnel to implement regular reviews on our most sensitive cases—reviews that can highlight all individuals who have looked at the case files—so that the case agents and their supervisors can be responsible for assuring these cases are being accessed by only those with a need to know.

The FBI's Electronic Case File (ECF) Document Access Report (DAR) shows accesses to all documents in a particular case file for a specific period of time. The DAR shows the user who conducted the captured activity, the date and time, and the actions taken (e.g., list serials, view text, print, or download).

Case Agents assigned to the most sensitive investigations will review the DARs every 90 days and, with their supervisors, will be responsible for resolving unexplained accesses. As part of the resolution process, the Agent and his supervisor may decide that more frequent monitoring of a specific case is warranted to determine whether accesses were anomalous and accidental or repeated and unauthorized.

This procedure should act as a strong deterrent as well as identify unusual entries into sensitive files. It will not stymie the flow of information necessary for effective counterintelligence. If this monitoring system had been in place, Hanssen would have known that every time he accessed a case or program as a result of "surfing," his entry would have been identified to the case Agent and questioned. And even though Hanssen did not conduct an unusual number of searches against FBI records, the fact that he was conducting these searches at all would have been immediately apparent and raised suspicions.

Expanded Polygraph Program. Currently, the FBI conducts polygraphs of all new employees prior to them beginning their service. In addition, individuals with access to certain sensitive programs or cases are polygraphed and, of course, the polygraph is used during serious internal inquiries to resolve unexplained anomalies and ambiguities.

As an interim measure, we identified for periodic polygraph examination those individuals who, by the nature of their assignment, have broad access to the FBI's most sensitive information. This includes any level of employee in any occupation who has access to our most sensitive information, such as data base administrators. In addition, we are conducting polygraph examinations of those employees leaving for and returning from permanent foreign assignments. These polygraph examinations are essentially complete. A more significant proposal for expanding the polygraph program is currently being reviewed by the AD security task force.

Judge Webster will closely examine the entire polygraph issue to include random polygraphs and inclusion of the polygraph as part of the five-year reinvestigation every employee now undergoes.

As there are elsewhere in the Intelligence Community, there will be unexplainable false positives and, as we saw in the Ames case, false negatives. On balance, however, we believe the potential for damage to be done by traitors outweighs these concerns. Accordingly, Director Freeh implemented this interim step with the full expectation that Judge Webster will examine this issue in its entirety and make further recommendations.

Enhanced Reinvestigation Analysis. In order to practice sound risk management, the FBI will devote additional resources to the reinvestigation process of those employees assigned to positions with sensitive access. Director Freeh mandated that an enhanced analysis capability within the Security Program be established to conduct security adjudications and to resolve any anomalies resulting from the reinvestigations of persons with access to the most sensitive FBI information. A separate unit was established within the Security Program for this purpose. The unit will also serve as the point for CI security integration. It is in the process of being

staffed. A cadre of nine contractors (retired FBI Special Agents) is already onboard and preparing their analytical work to support this program.

Other Measures Implemented. In addition to the ongoing efforts discussed above, Director Freeh directed implementation of the following changes to facilitate the continued incorporation of security into the FBI culture so that it is recognized as an integral part of operations:

- The security officer(s) in each Field Office will report directly to the Assistant Director in Charge or Special Agent in Charge to ensure that security issues are afforded the appropriate level of Executive attention.
- Each Assistant Director in Charge and Special Agent in Charge will establish a Security Council, modeled on the FBI Security Council, to provide a forum for addressing security issues affecting their components. These Security Councils will include both support and Special Agent personnel and will provide a broad representation of the respective Field Offices and Headquarters components.
- The Training Division, in conjunction with the Security Program, will provide a greater focus on security, particularly with regard to operational security, during FBI Special Agent and new employee training programs.
- The Security Program conducted a Bureau-wide training conference for Security Officers in June at Quantico to ensure that Security Officers are better prepared to exercise their important responsibilities. The Security Officers were also given the opportunity to meet with representatives of the Webster Commission to discuss the security situation at the FBI.

Interagency Support. Professional security officers from the Central Intelligence Agency (CIA) and the National Security Agency (NSA) have been detailed to the Security Program to assist in: (1) developing the security education and awareness program; (2) reviewing the handling, storing and processing of Sensitive Compartmented Information (SCI); and, (3) establishing a professional career development and training proposal for the FBI Security Officer. In addition, FBI field Security Officers are currently TDY to headquarters to assist in this effort.

Security Education and Awareness:

- In coordination with the Inspection Division, a "Back to Basics" training day is scheduled throughout the FBI to address the critical issues facing the FBI, to include security. A lesson plan has been developed to ensure important security policy and procedures are consistently and clearly understood by all FBI employees.

Security Education and Awareness training materials are being sent to FBI field offices from other intelligence community members to establish a resource library that will enhance employee awareness of security procedures. Creation of FBI specific security awareness materials are underway.

SCI Security:

- The FBI is currently reviewing its SCI handling procedures to ensure compliance with intelligence community standards. This effort is being led by a CIA officer that includes a written survey of all SCI activities in the FBI.
- Understanding the need for SCI access by senior FBI officials, two Sensitive Compartmented Information Facilities (SCIFs) are being constructed and accredited on the 7th floor of FBI headquarters. In addition, six Secure Working Areas (SWAB) are being established to ensure secure and ready access to SCI materials reviewed by the Director, Deputy Director, and Assistant Directors.

Professional Development and Training for the FBI Security Officers:

- An updated Security Officer's Manual has been produced that includes a "cookbook" to assist the security officer in implementing security policies and procedures. This practitioners's guide will address the immediate training needs for the FBI field Security Officer.
- A study is underway to evaluate the process for selection, retention, and development of highly skilled candidates for the FBI Security Officer positions. An examination of a career path for professional Security Officer is being conducted.

THE FUTURE

Using the seven focus areas identified during the pre-Hanssen review of the FBI Security Program, I have overseen the development of a detailed, comprehensive, and integrated set of security enhancement initiatives. Nothing yet discovered subsequent to the arrests of Hanssen or Hill change the need for the security enhancements already identified. The enhancement initiatives have been assigned to 15

prioritized categories. It will take time to transform the FBI Security Program. While the initiatives are prioritized, it will not be effective to cut the proposal into pieces. They are interdependent. Additionally, I anticipate that other security deficiencies will be discovered as our comprehensive review, and those of Judge Webster and the Department of Justice Inspector General, continues.

SUMMARY

No security program can absolutely prevent a "trusted insider" from making the decision to compromise this organization and the country. However, it is our goal to provide a significant level of deterrence; potentially influencing those persons who are thinking logically. We also intend to create a system that will result in the ability to more swiftly detect those persons who do choose to compromise sensitive information and to minimize the damage resulting from the compromise. To be successful, we must and are changing the security "culture" at the FBI. It will also take this Committee's support.

Mr. Chairman, I appreciate the opportunity to address the Committee and look forward to our continued collaboration to reach our mutual goal of a secure FBI. Only then can we achieve the success necessary to ensure the continued security of this great nation.

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535
July 23, 2001

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify before your Committee last week to describe the significant deficiencies in the FBI Security Program and the steps being taken to address them. As I have reflected on what was said, and after speaking with persons who are more familiar than I with the current state of the FBI's property accountability system, I want to correct my testimony on one point.

Relative to the FBI's ability to control laptop computers, you asked me:

"Is there a system in place today so if you have a computer with classified information that somebody in the FBI can say at 2 o'clock this afternoon 'I know where every one of the computers is with classified information and who has them?'"

My answer was: "Today, yes, that is true."

While that certainly is a reasonable objective for a property accountability system, I have learned subsequent to my testimony that the level of control outlined in your question is not possible today at the FBI. Work continues to tighten the property controls so that assurances can be made regarding the status and physical location, at any time, of all accountable FBI property. This includes laptop computers.

I regret any misunderstanding I may have caused as a result of my error. I continue to look forward to working with you and the Committee on this very important matter.

Sincerely yours,

KENNETH H. SENSER
*Acting Deputy Assistant Director
Security Programs and Countermeasures*

Chairman LEAHY. That is the point that concerns me the most. I agree with you on the question of the trusted insider. In any organization as large as the FBI, that is a problem you are going to have. But also within that organization, as large as it is, you have a smaller universe of people who have the most sensitive information. What bothers me is not so much what you describe is being

planned with the review in the future. What bothers me is a management culture that did nothing about this problem a long time ago.

Mr. DIES, yesterday, as you know, my office and everybody else's office here was informed, as was the public, by the Department of Justice that the FBI currently has 449 weapons unaccounted for. Most of them are handguns; some are shotguns and machine guns. I realize that is out of a total of 490,000 weapons owned by the Bureau. As I mentioned earlier, I am very concerned about the 184 unaccounted-for laptops, including 4 purportedly used for classified information.

Do you know when the FBI first became aware of this?

Mr. DIES. No, I don't. Other people might, but I don't. I am sure we can get you briefed on it.

Chairman LEAHY. Well, it would be interesting to find out when this first came to the attention of the FBI. To his credit, the Attorney General has discovered the situation and he is going to take a number of steps, such as requiring a Department-wide check to account for all weapons.

Mr. SENSER. Mr. Chairman, I have some information on that topic.

Chairman LEAHY. Go ahead, Mr. Senser.

Mr. SENSER. As I mentioned earlier, the FBI established the Security Council in May of 2000. As part of some of the initiatives that the Security Council began to look at, one of them was the notion of protection of computers and life cycle controls on the computers, as well as the protection of laptop computers.

This led actually to a series of recommendations that were approved and disseminated to the FBI population in early 2000 relative to the emphasis on control of laptops and the information that they process. As part of that review, it became apparent that there were issues with the accounting system for laptops, and the focus began on trying to identify situations where information might have been lost or classified—

Chairman LEAHY. By "issues" you mean they didn't know where all the laptops were?

Mr. SENSER. Yes, in the sense that in a lot of cases it was impossible to even make an assessment because the records were such that you could not tell whether the equipment was properly disposed of or not, who used the equipment, what it was used for, and so on.

Chairman LEAHY. Would everybody agree this is a serious problem with regard to the FBI's security information and technology programs?

Mr. SENSER. Absolutely.

Chairman LEAHY. Mr. DIES, you, too?

Mr. DIES. You bet.

Chairman LEAHY. Are we going to find a better way to track guns and laptop computers?

Mr. DIES. It is a combination of having a better system in place to help them, but it is of no use if you don't follow the system. So when people have an asset assigned to them and that asset goes out of service, you log it in as out of service. You don't forget to log it in and people are held accountable for the results.

Chairman LEAHY. Now, let's be clear on this. You can put the systems in, but I think your last point is the important one. Somebody has got to be held accountable. Who is held accountable?

Mr. DIES. Do you want to take that?

Mr. SENSER. Well, at the time actually there was nobody held accountable in the sense that the FBI policy was very clear on the control of laptop computers, and more specifically any laptop computers that might be used to process classified information.

Chairman LEAHY. You are saying nobody is held accountable, so you could have laptops with classified information and you sort of leave it up to the person who is holding it to make sure they are turned in when they are supposed to be?

Mr. SENSER. Well, what I am saying is—

Chairman LEAHY. We have got a much better system than that here in the Senate.

Mr. DIES. There is an automated system which is supposed to track all of our properties over \$500, for example.

Chairman LEAHY. I don't care about the \$500. I mean, you could have a \$100 Palm Pilot with classified information on it. I am not doing an accounting system here. I want to know, is there a system in place today so that if you have a computer with classified information, somebody in the FBI can say at two o'clock this afternoon I know where every one of the computers is with classified information on them and who has them.

Mr. SENSER. The answer is today, yes, that is true. As I mentioned, in early 2001 there were four recommendations put forward based on the work of the FBI Security Council, one of which was to reemphasize to all FBI employees the importance of the protection of laptops and the information they process.

The second was to ensure that our Inspection Division on all audits and inspections of field offices do a 100-percent accounting of the laptops assigned to that entity. The third was to report to our Office of Professional Responsibility any laptops that were identified as missing or stolen. And the fourth was to institute a process whereby every 6 months the computer specialists for those offices physically put their hands on every laptop, reviewed those laptops for viruses and to ensure that the software was appropriate, and to do a check of the security of those laptops.

Chairman LEAHY. As one who has sat on this Committee for 25 years and observed the FBI for 25 years, there is good news and bad news. The good news is I am sure that the people who would normally be handling these laptops with this classified material are themselves going to be very careful of it. I have seen FBI agents in very difficult, highly classified operations; I have talked with a number of them. I am convinced that they would be protecting this information with their lives, if necessary, especially if the security of the United States is involved.

What I want, though, is something so that if you do have a Hanssen or another person with bad intentions that they know these things are being tracked, and we know that the laptops are not going to be inadvertently left where somebody else might find it. That is my concern.

You have got to have both the electronic checks that are available, but you have also got to have the ability to go and find when somebody is outside the loop and be able to identify them quickly.

Mr. Kelly, you referred to problems with the 20 special agents-in-charge in the Customs Service scattered across the country. I think the term you used was "entrenched careerists." The FBI has almost three times that many SACs, and they each report, as I understand it, separately to FBI headquarters.

Now, we saw the problems with McVeigh. They failed to produce records, even though the Director had given an order that they had to. In the Wen Ho Lee case, a field office lacked counterintelligence resources and then disregarded FBI headquarters orders in an espionage case.

You adopted a regional structure in the Customs Service, but you know how strong field office autonomy is in the Bureau. Do you think the new Director should challenge the autonomy of the SACs and put a regional structure in place?

Mr. KELLY. Mr. Chairman, I think it worked for Customs. Again, it is a far-flung organization that is in 24 foreign countries and 100 RAC offices. I think what we needed in headquarters was real-time information. We weren't getting it. It was very reactive. If you wanted to find out about a case, it took days to get that information up.

I think that structure should be explored. I think, as I say, it has been helpful. You are able to hold people accountable in a much more direct way for a whole host of issues. Perhaps it is even property management, those sorts of things. I just believe, in law enforcement, in a much tighter span of control.

Again, there has been this notion of empowerment, pushing power down. I think in the unique law enforcement field, that has to be examined closely because, as I said, we have the authority to arrest folks. Obviously, the FBI is talking about very sensitive investigations concerning national security. In Customs, we were concerned about personal search and how do you have uniform policies throughout the country.

I would just simply suggest that that structure be examined. It gives the CEO of whatever agency you are talking about the ability to talk to a smaller number of people and get real-time information, and hold them accountable and responsible again on a real-time basis.

Chairman LEAHY. These things all kind of come together in a way, and one of the reasons for these hearings is to find out how we can do it better. This Committee and the members of this Committee have supported huge increases in money for the FBI, something that is not going to continue unless there are improvements.

Mr. Dies, you came to the FBI from industry and you were asked to put together a new technology program. You said, if I recall your testimony correctly, that the FBI did not make any meaningful improvements in its information technology in over 6 years and its computers were often incompatible. There is not a successful organization in business in the world that is not doing improvements where you can at least talk to each other and updating their computers.

Now that you are familiar with the current status of the FBI computer systems, can you identify problems that contributed to Robert Hanssen's ability to spy for the KGB for over 15 years from within the FBI? And if there are parts of this that you are going to have to give us in a classified area, be sure and tell us that and we will arrange to do that.

Mr. DIES. Let me say in a general sense that the technology security that was there was not specific enough, it was not granular enough. It was not always executed with management practices and follow-up as it should have been. I think the details of it we might be better off having in a closed session.

Chairman LEAHY. Is it fair to say, though, that you did find a number of things that, had they been done differently, would have at least greatly hampered Mr. Hanssen's ability to escape detection?

Mr. DIES. It is certainly true that I have recommended they change some things so that things like this might be handled in a little more expeditious fashion.

Chairman LEAHY. I think we understand each other.

Senator Grassley?

Senator GRASSLEY. Mr. Chairman, I would like to take some of my time for a statement, if I could.

Chairman LEAHY. Of course.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. First of all, it would be to thank you for doing a good job of oversight on this issue. I don't think we have spent enough time on oversight, and I think when we don't, then we don't fulfill our constitutional responsibilities and bureaucracy has a longer leash.

In the case of the FBI, I think too often we have melted before the FBI Director, who is called up here and asked some softball questions. The FBI usually goes away with more money, more power, and not any change in culture. So I thank you for doing this.

It was almost 1 month ago that we met in this room to discuss ways in which we might help the FBI regain the confidence of the American people. While there is much work yet to be done, as evidenced by the latest situation involving weapons and laptops computers, we are beginning to see some positive results.

First, President Bush has nominated Deputy Attorney General Robert Mueller to be the next Director. I had an opportunity to meet with Mr. Mueller last week and discuss with him several concerns that I have with how the Bureau has been managed over the last several years. I look forward to that confirmation hearing, where I will further assess his ability to make vital and necessary changes and eventually make up my mind on how to vote on his confirmation.

Second, I commend Mr. Ashcroft for the action he took last week to enlarge the jurisdiction of the Office of Inspector General. I have been saying for years that the FBI should not be allowed to police itself, and obviously I am encouraged by this new step toward the establishment of a free and independent oversight entity.

But I would also add a word of caution. These changes result from an administrative order, as you have said, and there is a need to put them in law, codify them. This is particularly essential with respect to whistleblower protections, which I am pleased to see were also addressed in the administrative order. But I think also not only should they be codified, but they fall far short of offering sufficient protection against retaliation of FBI personnel coming forward with protected disclosures.

I would like to make one thing very clear which is a concern of mine as I work on FBI reform. The comments that I make about the FBI should not minimize the great sacrifices made everyday by hard-working FBI agents and support personnel.

I received a call, for instance, last week from a special agent-in-charge. He and some of the folks in his office were concerned about some of the comments that I have made about the FBI. I told the special agent-in-charge that I believed the great majority of men and women in the FBI serve their Nation proudly, that the FBI works best when it sticks to the fundamentals, and that is to find the truth and let the truth convict.

But I also told him they deserve an organization that has integrity and incredibility, and it is the FBI management system that is broken. The system that is now in place does a real disservice to the hard-working agents on the street.

The FBI has an institutional arrogance in the way that it deals with its own employees, Congress, and its fellow law enforcement agencies. Part of this arrogance lies with the Bureau's propensity to place image and publicity before basics and fundamentals. An example is holding news conferences in high-profile cases before the investigation is complete and all the facts are in.

It is also a type of arrogance that the General Accounting Office recently encountered when they found it took an average of 66 days to just set up an appointment with officials at FBI headquarters. Certainly, this arrogance is further supported and reinforced by the organizational structure at the Bureau. I believe it is vitally important for the next Director to recognize the need for change in this structure.

As I think we will see from testimony today, it is clear that a double standard exists within the FBI, one for senior officials and another for rank-and-file. It has been a well-known practice within the Bureau for many years that senior officials and rank-and-file agents are given different punishment for similar misconduct or offenses.

When line agents are routinely given penalties that are by the book, senior officials are routinely given a slap on the wrist. This has been a classic example of the fox guarding the hen house. Senior FBI officials are given the responsibility for adjudicating the misconduct of their peers. The problem is these senior officials become so blinded by the need to protect the reputation of their peers in the Bureau that they fail to realize the consequences of their actions bring far more damaging results.

The organizational structure of the FBI and the manner in which the Bureau manages its people and programs only serves to contribute to this unbalanced, obstructive condition. If there is anyone

who still wonders what I mean when I talk about the FBI culture of arrogance, I can think of no better example than this.

One can only imagine the kind of effect that this double standard has on morale within the agency. Clearly, this situation would be destructive in any setting, but it has become particularly devastating to individuals at an institution who are sworn to uphold truth and justice.

Let me give you an example of just how pervasive this problem is within the FBI. We had an internal survey that found that less than 5 percent of the FBI agents sampled indicated an interest in promotion to FBI headquarters, and of non-SES agents who have already been assigned to FBI headquarters, less than 6 percent sampled believe that the experience was positive.

Another by-product of this institutional arrogance comes at a significant cost to the American taxpayers. The mishandling by the FBI of situations such as Dr. Fred Whitehurst and Mr. Tom Stewart have cost the taxpayers \$1 million and \$6 million, respectively. Settlements such as these can highlight deeper problems with an agency.

For that reason, I am sending a letter today to Attorney General Ashcroft asking for a detailed list of incidents in the past 5 years in which the Department of Justice has made a payment of over \$25,000 to either private citizens or Government employees, because Congress has a duty to know what disciplinary actions are being taken against those Federal employees who may have caused significant expenditures of taxpayers' funds.

A failure to properly discipline inappropriate actions by a Justice Department employee can send the wrong message to all employees, and I believe this information will provide a better understanding of the concerns about the disparity of treatment between SES and the rank-and-file employees within the FBI.

The erosion of trust in the FBI is happening both from inside as well as outside the FBI. We now have a historic opportunity to help the FBI regain the trust and confidence of its own agents, as well as the American people. We already beginning to see some progress and I look forward to continuing to help the FBI and its next Director regain that trust.

I would also like to make a comment about the latest mishap to you, Mr. Dies and Mr. Senser, representing management today. The history of the FBI's cooperation with outside entities, including Congress, leaves much to be desired. The investigation that will be performed by the Department of Justice Inspector General into lost or stolen weapons and laptops at the FBI will be the first under this new Attorney General's order.

I suggest to both of you that you view this as an opportunity to change the tactics of the past and fully cooperate with the Inspector General's investigation. I, for one, will follow the investigation very closely not only because I want to know what happened, but also to see if this investigation cooperation is done in a very usual way.

I believe it was a Supreme Court Justice who once said that sunshine is the best disinfectant. Perhaps we should have the Government Printing Office print this slogan and put it in every office that we have.

I guess I will only have time for one question, so this will be to you, Mr. Dies, and it is regard to the computer-related problems that you talked about. Without addressing the management that oversees those problems, I don't really think you have solved the real problem. So how is the FBI addressing the management of these systems?

For example, to blame the delay of the McVeigh documents on computer glitches, I think, would be to look at the wrong place. You have got to look at the management of the systems as well as the systems.

Mr. DIES. I think Director Freeh was very candid when he said this was not a computer problem, this was a management problem on the McVeigh document case, short and simple.

From the computer and support side, I can make things easier for the people to use. I can make it easier for them to do things. If they don't execute what they are told to execute, it will do little good. So we can put the systems in place to help them, we can make it less burdensome, we can make it easier for someone to operate within the defined environment. Executing as you are told to is not a computer problem; that is a management system problem.

Senator GRASSLEY. Thank you, Mr. Dies. Thank you, Mr. Chairman.

Chairman LEAHY. The Ranking Member has arrived from his other hearing. I just checked with him and, with his permission, we are going to go to Senator Durbin, who has been waiting here, next for questions. Then we will go to Senator Hatch, who has both questions and an opening statement.

Senator Durbin?

Senator DURBIN. Thank you very much, Mr. Chairman, and thank you for this hearing. It is certainly timely.

I want to thank this panel and I want to join in acknowledging Mr. Kelly's presence here. When I first came into the U.S. Senate, we discovered a practice in the Customs Service in Chicago that needed correction, and needed it quickly.

I want to salute you, Mr. Kelly. You didn't waste any time, you didn't come up with any excuses. You made the change in a hurry and I think it was in the best interests of the Customs Service and our Federal Government. That kind of decisive leadership is rare in Washington. You did a great job for your country with the Customs Service, and thank you for being here today with your suggestions.

As I listened to the testimony here from this panel, and I respect the fact that you are all here bringing us information about what is going on, it is clear to me that the FBI has not been starved for funds. The FBI has been starved for leadership.

It is hard to believe that the situation has disintegrated and deteriorated to the point that it has at this once great institution where so many men and women, 25,000-plus, who put their lives on the line for the country and are dedicated people, could allow this situation to reach the point that it has today.

How did this great agency fall so far so fast, or has this been there for such a long time and it has been carefully concealed? Can the Federal Bureau of Investigation stand up to an investigation? I think that is what this Committee is asking today.

Mr. Dies, for example, there is an article in the Federal Times here. I don't know if you saw it, but you may know the individual who is quoted. His name is Mark Tanner. He is the FBI's deputy chief information officer, and it is my understanding he is working with you on this Trilogy project to try to modernize the information technology available to the FBI.

Mr. DIES. He reports to me.

Senator DURBIN. Pardon me?

Mr. DIES. He reports to me, that is correct.

Senator DURBIN. I think he has been very honest and candid in this interview and I would just like to get your reaction to a couple of things he said.

I quote from the Federal Times article: "While Tanner is happy to bring his fellow agents the benefits of modern technology, he occasionally get frustrated by the bureaucratic procedures that come with a headquarters position. 'The budget process is difficult,' he says. 'There are so many layers of oversight and each person in the chain thinks their job is to cut your request, not refine it or understand what is really needed.'"

He is asked at one point, "Is there any part of this job that came as a surprise to you?" And he says, "I was surprised by the length of time it takes to gain support for modernization of the FBI information technology." I can't imagine a business that would tolerate that mentality through one quarterly earnings report, let alone as a permanent mind set.

Does this accurately reflect the resistance within the FBI to change and modernization?

Mr. DIES. As to your comment about commercial organizations couldn't tolerate this, they could, but only for one or two quarters. They would then be out of business. You either use the competitive technologies or you don't exist in the commercial market.

I have only been there a year, but my opinion is there are two parts to the FBI culture. One part you don't want to change; the dedication of the men and women out there is unbelievable. What they do, day in day out, with no technical support from the systems side is truly amazing.

All organizations have barnacles and resist change. I don't think the Bureau is any different. They have to learn to change. They have to be willing to accept technology as a tool, if you use technology, or implement security programs and be accountable for the results or whatever. So they have a long way to go.

If you have an afternoon to talk about the frustrations of the budget process or a whole day to talk about the frustrations of the procurement process, I am at your disposal because it is really a nightmare if you come in from the outside to try to help.

Senator DURBIN. But what I am asking you is, within the FBI, are you receiving cooperation in this effort to modernize and change this mind set and this antiquated technology that can't keep up with modern needs?

Mr. DIES. I am getting all the help I have asked for. It is not easy. Are there recalcitrants and people dragging their feet? Of course, there are in any organization. When I have asked for help, I have gotten what I have asked for and I am comfortable at this point that we can get it done.

Senator DURBIN. Mr. Senger, you have been involved in security and intelligence work with the CIA and now with the FBI. It strikes me as odd that the CIA, an important intelligence organization, apparently was able to modernize and keep up with changing technology and the FBI was left in the Dark Ages. Can you explain it?

Mr. SENSER. No. Actually, I can't explain it, but I think it is evident when you look at the results. There is a very different automation environment in the two organizations.

Senator DURBIN. Can you tell me what you mean by that?

Mr. SENSER. Well, in terms of processes, and I will stick to security, for example, we have a requirement that says that when somebody is preparing to travel overseas, they need to file a foreign travel report so that it can be duly noted and reviewed, brief them on the hazards, and so on.

At the Agency, the process is electronic. You fill it out online. It gets sent and approved electronically. It goes to an automated data base. At the Bureau, it is a paper process. It goes to a paper file, and that limits your ability from a security and counterintelligence standpoint, for example, to search data bases, look at windows of time to see who may have traveled overseas, and so on. So it is just a very different environment.

Senator DURBIN. Well, let me just say—and I will turn it back over to the Chairman because I know Senator Hatch is waiting to make his opening statement—I have made a suggestion with Senator Specter about the creation of an inspector general for the FBI, and that inspector general would report to the Attorney General. There would be no question that that would be the line of command.

The reason I did that and the reason that Senator Specter joined me was the belief that there has been a resistance to this sort of inspection for a long, long time. Although we can point on paper to all sorts of things that should have caught the problems that we are seeing in the newspapers every morning, the fact is it didn't happen.

There is a wall that has been built between the FBI and the Department of Justice, and the agencies that have been empowered to look over that wall and find out what is going on have failed. They have failed miserably. When we can't find weapons and we have laptop computers with classified information disappearing, and when Robert Hanssen—and this was reported in the newspapers—can put a hacking device on his own computer at the FBI, hack into his superior's computer, take down classified information he wasn't supposed to see, and then report himself and nothing comes of it other than his continued betrayal of the United States and its security, that tells me that the system has completely disintegrated in terms of inspectors general and what they are expected to do.

I am open to suggestions here, but I think merely a nod of the head and a furrowed brow and a show of concern isn't enough. We have got to take a look at this once proud agency and put it back into the position it deserves.

Thanks, Mr. Chairman.

Chairman LEAHY. Thank you, and I would tell the Senator from Illinois I totally agree with him on that.

As I mentioned at the beginning of the hearing, Senator Hatch was testifying on an extremely important issue at another hearing. Following our normal custom, we will go to Senator Hatch and then go back to the order they came in, which would be Senator Sessions.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. I am delighted to be with you. I did have to testify in another hearing and it took this long to get here. I thank you for convening this hearing and continuing this important oversight effort.

Today's hearing, with its focus on management issues, is timely in light of the latest revelations concerning firearms unaccounted for at the FBI, and 184 missing laptop computers, 4 of which may contain classified information. This is simply inexcusable. Apparently, this was a department-wide problem during the previous administration, as over 500 weapons are also unaccounted for at the INS.

Lax administrative controls over sensitive materials like these cannot be tolerated. This is another example of why I think the FBI would benefit from a commission of outside experts doing a top-to-bottom review of the agency, as Senator Schumer and I have proposed.

The latest revelations also highlight the challenges ahead for the new FBI Director, Bob Mueller, whose nomination I hope this Committee will consider as soon as possible. I think that needs to be done.

I applaud President Bush for his choice, and I think that Bob Mueller will become an excellent Director. He is a principled, dedicated public servant with a proven record in law enforcement and reform. His no-nonsense style has served him well and helped him vastly improve the performance of the U.S. Attorney's office in San Francisco, and I think he can do the same thing at the FBI.

There are many issues facing the FBI that I am pleased that today's hearing is addressing. Technology is not by itself the answer to all of the problems at the FBI, but it is unquestionably an essential part of the solution. I am pleased to see that the FBI has reached outside itself to an industry expert to develop the best possible system to fit its needs.

Technology, however, is only a tool to enforce policies. It is people who must set the standards, make the value judgments, and insist upon adherence to those judgments. I am pleased, therefore, that we also have with us today a key FBI official who is helping to shape one set of policies critical to the FBI, and that is internal security.

I am pleased to have all three of you here today, and all three of you are giving, I think, very important testimony. But I am talking right now about Deputy Assistant Director Ken Senger, the new head of the FBI's internal security program, who is here to discuss the FBI's plan for upgrading its security program.

Like several key FBI officials, Mr. Senser's background comes from outside the FBI. He is an 18-year veteran of the CIA, who brings an important, independent expert perspective on how the FBI can protect itself and its operations from internal and external security headaches.

I also welcome the testimony of the current and former agents on our second panel, whose testimony will focus on internal discipline at the FBI and how the investigation and adjudication of disciplinary matters can be improved.

I applaud Attorney General Ashcroft for taking important and positive steps last week aimed at addressing misconduct issues. The Attorney General on his own initiative expanded the role of the Department of Justice Inspector General and gave that office original jurisdiction and right of first refusal over all allegations of misconduct by Justice Department personnel that are unrelated to the professional responsibilities of Justice Department attorneys related to their legal work. This is an important step which immediately addresses the problem without precluding additional Congressional action.

Some of the agents testifying here today have expressed concerns over a perceived double standard under which senior officials at the FBI are punished less severely than regular agents for the same infractions. This is a very serious issue and one that former Director Louis Freeh tried to address in August of 2000 by taking the constructive first step of eliminating the separate SES Disciplinary Board.

I would like to make part of the record a copy of an August 15, 2000, memo from Director Freeh setting forth his basis for changing the policy.

As described in the memo, some of the disparity in discipline is also the result of statutes and regulations, and I think it is entirely appropriate for the Committee to examine this statutory scheme which restricts the type of discipline that can be given to senior officials and whether it should be changed to equalize the available punishments for all employees regardless of rank.

The statutory scheme, however, does not account for all cases of disparity of treatment. There have been cases where senior officials have probably been treated too leniently. Senior officials must be held to the highest standards of conduct. They must set the example for the rest of the agency. Any lasting improvements to the FBI's culture will have to be embraced and enforced at the top, and I think that Bob Mueller is just the kind of guy who can make this happen.

One tool I want to give to the new Director is the benefit of an independent review of the agency by outside experts from a variety of fields. I have joined with Senator Schumer in sponsoring the FBI Review Commission Act of 2001, which would established a mechanism for a first-rate group of experts from a variety of fields like management, technology, and intelligence to do a thorough review of the FBI and make strategic recommendations to the Director for improvements. Such an independent group, with no turf to protect or axes to grind, could really help bring the best practices of the corporate and scientific worlds to bear on the challenges currently facing the FBI.

There will be a lot of suggestions for improvements to the FBI. Some are underway, others are being developed. We in Congress are right to scrutinize the plans for reform and to be vigilant in our oversight. We will not blindly accept changes, but will question and test them to ensure that they will address the problems which exist. Through this process and by working in collaboration with the Justice Department and the new FBI Director, I hope we can be a constructive part of a revitalization of the FBI.

Mr. Chairman, I for one have been very pleased with the service of Louis Freeh for these last many years. He inherited an agency that really was having a great deal of difficulty, and he helped straighten out an awful lot of things that were wrong about the agency and did, I think, as good a job as he could under the circumstances. And his record of major accomplishments is really a tremendous record, but it is apparent that we still have work to do.

The new Director is going to have the benefit of these hearings and the benefit of the revelations that have come forth, and I am hopeful that the new Director, with the help of Congress, will get the job done and help to restore the agency's reputation in some of these areas.

But I don't want to leave the impression that I was displeased with Director Freeh's service. I thought he did a terrific job and I think most people who know him believe that he did a terrific job under the circumstances. Does anybody have the ability to solve all problems? The answer to that in an agency as big as this one is no, but we have to keep working on it because this is the premier law enforcement organization in the world and I want to make sure that these types of problems don't happen again.

Let me just ask you this, Mr. Dies. Do you anticipate any additional budget requests for fiscal year 2002 related to technology upgrades at the FBI, and if so, what will the requests likely be?

Mr. DIES. Senator, the first priority, as I said, is to shore up the security holes that have become apparent. Some of those are technology-supported, some of those are personnel-related. We have put to Justice and OMB the requests. The cycle we are in cued those requests up in 2003. I think you will want us to move significant chunks of that up to 2002. I don't think you want to wait until 2003 to get started on this problem.

So a top priority for the FBI in terms of increased focus and funding will be to plug the security holes. Behind that would be a better document management system to correct the kinds of problems we had with the McVeigh case. Those two things are both, as I said, currently aimed in this budget cycle at 2003. I as a citizen would encourage you to let us get started on that a little earlier.

Senator HATCH. Well, thank you. I am really pleased that you are there. You are a 30-year veteran of IBM and you have been hired a little over a year ago to supervise and implement the FBI's technology upgrades. So I am really tickled to see you in that position.

Mr. DIES. Thank you.

Senator HATCH. Of course, Mr. Kelly, I am very proud of you and the work that you do. You are doing a great job.

Let me just ask you these two questions, Mr. Senser, and then I will cease. A key principle of security is defense in depth, where

security measures are layered together, as you know. How will you bring this concept to bear on the revamped security plan at the FBI?

And then let me just ask this second question, and I will be happy to repeat it again if you need it. Have you been coordinating the interim security measures the FBI is taking with the Webster Commission so that they are aware of what you are doing?

Mr. SENSER. To answer your second question first, we have had a very close relationship with the Webster Commission, Mike Shaheen, and talked frequently about the recommendations that we are developing, as well as the enhancements we have initiated. So I believe we are very closely aligned and agree on the philosophy and the steps that we have taken to date.

In terms of your first question, this is a very difficult issue to address at the FBI in the sense that defense in depth comes from proper integration of activity. And at the FBI, security is dispersed through a number of different divisions and there are responsibilities for security at a number of different divisions.

The initial attempt at addressing that took place in May 2000 with the initiation of the FBI Security Council, which was the first forum that the FBI had to bring these issues together across divisional and organizational boundaries. But we have got to go further, and our initiative and our recommendations will address that.

Senator HATCH. Well, I, for one, am happy to have you there, both of you, and Mr. Kelly as well.

Let me just put in the record some of the major accomplishments of FBI Director Louis Freeh so that we all understand that this is an ongoing thing, that we have got to continue to upgrade the agency, but he did a terrific job while he was there.

So if I can, Mr. Chairman, I will put a list of some of the major accomplishments in the record at this point.

Chairman LEAHY. Without objection.

It should be noted that these hearings were not designed as a judgment on the administration of any past Director, but rather are a long overdue look at some of the inherent problems in the FBI. This Committee has authorized so many billions of dollars. We want to have the best, and that is why I have made it a point to have long talks with both Attorney General Ashcroft and the soon to be nominated Director, Mr. Mueller, regarding it. In fact, for that matter, we will be scheduling Mr. Mueller's nomination hearing as soon as the President sends the nomination up here.

Senator SESSIONS?

Senator SESSIONS. Thank you, Mr. Chairman. We are moving toward, I believe, an institutional spasm, a catharsis perhaps, with the FBI. That happened with the Internal Revenue Service. They were perceived as being arrogant, separated from the people, and marching to their own drummer. And I think we went too far with the IRS. I think what can be shown today is that we damaged that agency more than we benefited that agency.

I have the greatest respect for FBI agents, and I have known them personally. Some of them are my closest friends; I have known them for 15, 20, 25 years. My concern is that we do make a change. It is time for particularly the middle-level bureaucrats within the agency to change, to realize that control and secrecy and

direction all from Washington at their own will is not always healthy. We need a Bureau that is more responsive to the times that we are in, Mr. Chairman.

I guess I would just say to you, in this hearing your challenge is going to be to make sure that Mr. Mueller and the people that he brings on board and those who are already there realize that we expect improvement and change, and at the same time not to damage one of the great investigative agencies of all time. I really believe that. They do so much good work. The agents that I have worked with over the years—I know them, their integrity, their hard work, their dedication, but there are some things that are troubling and it is time to fix them.

Mr. Kelly, I wanted to ask you and confront you a little bit on your views. I am not sure the regional administrative departments wouldn't be helpful. Perhaps that is a very good idea, but what I am troubled about is a mentality that everything has to be approved from Washington and that the tendency of the Federal department head is to believe they must control everything.

McDonald's controls the quality of their hamburgers and how long it takes to get them served and so many other things that they do, but they don't have somebody watching each individual store everyday, second-guessing every order for a hamburger.

Is there someplace in there that we could reach an accord?

Mr. KELLY. Yes, Senator, I think there is a middle ground. When you do have these far-flung, diverse organizations, they do tend to develop their own policies, their own way of doing business. I think from my own experience that we imposed an additional level that I think made policy more consistent and enabled us to get real-time information at headquarters, which was certainly lagging when I got there.

That doesn't mean that they direct every activity by any means, but you will find—again, I am talking about my Customs experience—that SACs become very independent, and unless there is, in my view, some oversight, some communication on a regular basis to another level of management, there is very little communication.

Now, when something is going to be done, when they are going to take an action, yes, in the structure that I found they would go to headquarters. But short of that, there wasn't adequate communication. In addition, there wasn't inspection, and I don't mean necessarily formal inspection, but there wasn't an examination of practices on a regular basis. So I think you can reach something in the middle where you are not controlling every activity but headquarters knows on a real-time basis what is going on.

Senator SESSIONS. Well, one of the things that President Reagan did that was marvelous—and I came on as United States Attorney in the early 1980's—he said we are going to have a local law enforcement coordinating Committee, and that coordinating Committee included the sheriffs and the chiefs of police and the law enforcement community, United States Attorneys and all the Federal agencies, and they would decide what priorities were important for that community.

What we found is they didn't always coincide with the priorities back in Washington. They wanted organized crime, but there might

not be any organized crime, La Cosa Nostra, in Mobile, Alabama, but we had other kinds of crime of critical importance.

So I don't want to get to a situation in which we have some sort of centralized domination telling every agent what their daily priorities ought to be. I do believe that the SACs should be participating in these Committees that still exist, developing localized priorities, and they ought to be respected in that. So there is a balancing act. I understand that.

Mr. SENSER, I have just in the back of my mind over the years felt that some of the problems in the FBI may be that it has a major counterintelligence mission, and that that somehow spills over into all the other work that they do, creating a wall sometimes, a secrecy, a sense that they are more separate and apart than the average law enforcement agency would be.

Have you ever given any thought to perhaps separating within the FBI counterintelligence more clearly from the routine law enforcement, and would that perhaps serve both missions better?

Mr. SENSER. I haven't focused on the removal of counterintelligence of the agency, but what—

Senator SESSIONS. Or dividing it within the agency.

Mr. SENSER. Yes. Those kinds of things we have looked at in the sense that the task is much more complex than what might be, for example, at the CIA, where everything is very homogenous; it is all intelligence work. Eighty percent of the FBI focused on criminal investigations that are not classified. So you have a very different environment that you have to protect and a wide variety of information and different requirements on sharing that information.

So we have conceptually talked about some ideas in terms of systems and doing other things, virtual networks and things, to separate those activities from the classified and the non-classified.

Senator SESSIONS. I don't know where it comes from, but there is, according to almost every Federal prosecutor I know, a belief that Senator Grassley is basically correct that within certain high levels of the FBI there is a culture of arrogance, a sort of defensiveness that is unhealthy.

I am not sure some of that doesn't come from their concern about secrecy, that they are disciplined and they are supposed to contain information and not distribute it too recklessly. Some United States Attorney calls and says the court wants this document, and they are not real sure it needs to go and they don't think it should go. They start making independent decisions that get us in big-time trouble, as I think may have happened in the McVeigh case.

But I do believe that breaking down that culture may require a separation because when you are dealing with Hanssen or somebody dealing with high-level espionage-type issues, they have got to be exceedingly secretive and disciplined about everything they do. But it should not spill over into the normal savings and loan fraud case or a bank robbery or something like that.

I tend to agree that the FBI is not starved for funds. I do not believe the FBI is starved for funds. I think the challenge of reorganization and improving that agency goes beyond money, and I expect that Bob Mueller will be confirmed. From my experience with him, I knew him when he was United States Attorney in Boston. I think I knew him when he was the chief assistant there. He

has been a career prosecutor all his life. He is a Marine, he is a tough leader. I think he has the will and the experience and the insight to improve the FBI. And those who do not cooperate in that, I hope the hammer will fall on them.

I think the Bureau is going to have to get on board and we are going to have to improve this agency, and if they are not cooperative with Mr. Mueller in the improvement of it, the result is going to be this agency could be damaged like any other agency because this Congress wants some changes, and I think the American people do.

I would finally say, in an agency as big as the FBI, the way the world develops is when you have an error and the media wants another error, they have got the whole United States and hundreds of thousands of cases going on everyday and it is easy to go out and find this error, that error and that error, and say the whole FBI is incompetent. I do not believe that is fair.

I do think it is time for a culture improvement within the Bureau, but I don't think it is fair to say that on a routine basis they are not doing excellent work throughout this country. I know they are and I wanted to say that.

Thank you, Mr. Chairman

Chairman LEAHY. And I don't think you have heard anybody say otherwise here in this Committee.

The distinguished senior Senator from California.

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I just wanted to pick up on something that Senator Sessions said because having sat through both the Ruby Ridge, which both Senators Hatch and Leahy have as well, and the Waco investigations that this Committee did, what appeared to me was that the attribution, the responsibility, didn't really go up the line adequately, that SACs had so much authority, and when you really tried to get to the top here in Washington, well, nobody really said do this or do that. I think that is one of the problems.

I have discussed this personally with Mr. Mueller. I think he is going to change that so that on the big incidents where the whole kind of professional quality of the FBI is at stake, responsibility is at the top. I think there is no better thing in those incidents than someone at the very top going out to the field to really be there, to really witness what is happening, and to be prepared to be responsible for the decisions that are made so that some SAC somewhere doesn't make them and then they are the ones that are kind of hung out to dry when everything goes wrong. So that is the first thing I wanted to say.

The second thing is I have a great respect for Ray Kelly. I have known him now for a while. I have watched him as Commissioner of Customs. We have had a lot of opportunity to talk.

I would like to ask you this question. Questions have arisen about which type of disciplinary oversight is better, whether it is peer review within the FBI, an internal affairs unit that we might have in a local police department, or a strong outside authority that can come in and do an investigation from the outside.

Some former agents, one of whom will testify later, believe that the peer pressure involved in agents investigating other agents

works best. Others argue that peer review really just leads to cover-ups and a kind of “protect one’s own situation.”

Given your experience at Customs, as well as NYPD, and knowing of your knowledge about the FBI, which system do you think would work best?

Mr. KELLY. I think a combination of both, Senator, and in my prepared remarks I talked about the need, in my judgment, for a robust internal investigative component that is supported from the top that reports to the top of the agency. But what I think you should have is oversight of that entity by in this case the Office of Inspector General in the Justice Department.

Now, the Treasury Department has a construct like that. It also has a separate IG for tax administration. I am not talking about that. I am talking about the other IG system where, for instance, in Customs you have an internal investigative component of about 150 people. We tried to get the best investigators from the Office of Investigations and we rotated them into Internal Affairs.

The Office of Inspector General has the ability to take over any case, to monitor internal investigations. Indeed, every investigation that targets a GS-15 or above goes automatically to the IG. But they can supersede; they can, in essence, take any case themselves. I think a combination like that can work.

I think if you take it totally out of the agency, you lose a lot. You lose the knowledge of the culture, you lose the knowledge of how it works on a day-to-day basis. The investigators are removed from it. So I think you can have a combination and that is what I would recommend.

Senator FEINSTEIN. Well, you know, a lot of what I see that has happened that has, I think, dulled the very stellar image of the FBI is really kind of a lack of professionalism. I would have to put it to that. I mean, the equipment missing is really a lack of professionalism.

What the agents said and how they conducted themselves working the Wen Ho Lee case, making threats—I don’t think that is good professionalism. The number of leaks that have come out—as a matter of fact, my staff did a NEXIS-LEXIS data base search, because I have been trying to write some legislation on preventing leaks, and they found various iterations of “Department of Justice sources say” and “FBI sources say”; over the past 2 years, over 1,000 examples of that.

I strongly believe that professionals in an investigative situation should not say anything to the press about that investigation because people get tried in the press then, as we have seen happen so many times. So I have sort of come to the conclusion that you are right about the culture, that the culture is a much more relaxed culture today than it used to be 10 or 15 years ago.

Can you comment on that? Maybe I am all wet.

Mr. KELLY. As far as talking to the press is concerned or leaks in general?

Senator FEINSTEIN. As far as talking to the press and in terms of the stringencies of the professional responsibilities that they carry out.

Mr. KELLY. I think in law enforcement, in general, that is an issue, that is a problem. I think there are lots of leaks and people

talking to the press. I think it can be tightened up if management at the highest levels of an agency put out the word that, hey, we don't want you to do this.

A lot of times, it is done because of competitiveness. Agencies are competing against each other; they are competing for budgets. They want to get the story out to show they are doing a good job. I think it can be tightened up if the head of the agency makes it clear that there will be consequences if you do that, but oftentimes it is tacitly supported by the head of the agency.

Senator FEINSTEIN. Could I have the other two gentlemen comment on that point?

Mr. DIES. There are lots of ways to do things. I can only speak from the commercial corporate world, where we had the inspections pretty much done as close to the site of the infraction as possible within certain guidelines. And certain classes of things percolate right up, so it is much in the same way.

I am not one that would be knowledgeable about the pros and cons of an external IG organization or equivalent. I would not know how to comment.

Senator FEINSTEIN. Do you believe that an internal review is more effective?

Mr. DIES. I think there is a phrase they use at IBM: you expect what you inspect. So you get what you pay for. If you expect somebody to follow a set of guidelines and procedures, you have to make darn sure they do, and if they don't, you take action. Letters to the file are nice, but sometimes insufficient.

I think internal reviews, if properly managed, probably could be OK, but I will step aside on that to the Committee here.

Senator FEINSTEIN. So what you are saying is stronger management. You said before that procedures can be in effect, but if somebody doesn't manage them—

Mr. DIES. If you have the right management, you enforce the procedures and you have an organized approach to this problem, there is no reason it can't work. That would be my opinion.

Senator FEINSTEIN. Would you like to comment?

Mr. SENSER. I agree. I mean, for the most part, when expectations are clear, when people understand what the ramifications are of violating department policy and serious action is pursued, I think most of the oversight can be accomplished internally, and in maybe some cases of very senior managers that you would want an outside organization or other entity to look at it.

Senator FEINSTEIN. Mr. Chairman, as a matter of fact, I have an appointment with Mr. Mueller, so I am going to ask to be excused and for the first time, I think, end before my red light went off.

Thank you very much.

Chairman LEAHY. I appreciate the Senator's involvement. This is a matter about which she has raised numerous and valuable questions in the past, which I appreciate.

Again, I would emphasize this is not a case of us ganging up on the FBI. Everybody here has a great deal of appreciation for some of the tremendous things that the FBI has done in the past and continues to do today. Unfortunately, many of the things they do the best we can't even talk about because we want to make sure they keep on doing it. So we should note that.

We do want to make sure, though, with all the money being spent, that we are bringing them into the 21st century, as Mr. Dies and Mr. Senser have said, needs to happen in the FBI's information technology and security systems. And what Mr. Kelly has said, of course, has been to reflect some management things. Sometimes, we have management by inertia, or we can have management by innovation, and I would like to have more management by innovation and less by inertia.

So I thank the Senator from California, and I would turn to the Senator from Washington State.

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this very important Committee hearing. I apologize, having two other Committee assignments this morning, that I wasn't here to hear your testimony in person, but I have reviewed them and have a few questions for Mr. Dies and Mr. Senser.

I see in the background, Mr. Senser, that you were formerly with the CIA and that was for a period of years, is that correct?

Mr. SENSER. I am actually detailed to the FBI from the CIA and I am an 18-year security veteran with the CIA.

Senator CANTWELL. And, Mr. Dies, your background prior to—

Mr. DIES. Thirty years with IBM.

Senator CANTWELL. Obviously, we are here reviewing a number of concerns about a variety of cases and also information about equipment and information. And I think a lot of us probably came with a great deal of concern and anxiety.

Having read your testimony, I feel like we have just found out that where there is smoke, there is fire. That is, that the system security and level of what I would call "network assurances" and a variety of things that are probably in—and I want to get to this question—other agencies like the NSA or the CIA are at much higher levels of sophistication than they are at the FBI. What we are hearing today is basically we are at a very, very elementary level. In fact, the things that have exploded into the public realm really do signify a much greater underlying problem here. That is my assessment of reading your testimony.

When we start with Trilogy is basically getting you system functionality. It is not security. It is getting you a software system and ease of use. So I wish I was wrong on that assessment, but I think I am right.

I don't know if you care to comment on that first statement?

Mr. DIES. I think the sad news is you are absolutely correct.

Mr. SENSER. And from the security standpoint, it is somewhat complex, but it gets back even to the general culture of security at the FBI which has to be changed.

Senator CANTWELL. Maybe I have a different perception, and I don't think it is just from watching movies like "Mission Impossible" or "Code Breakers" or what have you, but I definitely get a sense that the NSA and the CIA, who are in similar, related businesses, have much more sophisticated communications and security systems.

Is that correct, having been with the CIA?

Mr. SENSER. For the most part, yes. Of course, there are always vulnerabilities, and certainly Ames was an example for the CIA of some vulnerabilities that were not addressed but that have been

acted upon and the security improved considerably. Every lesson gives you learning points. But I think it is a fair statement to say that many, if not most, of the other agencies are ahead of where the FBI is today.

Senator CANTWELL. And why is that?

Mr. SENSER. Again, having not grown up in the FBI, it is hard to make a conclusion, other than there are always priorities and the FBI is very mission-oriented, investigative, operational, get the job done. Sometimes, that competes with security, where you are trying to protect information; you are trying to say, wait, before you do that, let's talk about it. But, again, it is a culture that we are working to change.

Mr. DIES. I might make two comments, Senator. One is in the tactical operations supporting investigations, some of the technologies the Bureau uses are really quite sophisticated and quite good.

The second point is my personal opinion would be neither the technology nor the security operations were of sufficient high priority that they got the attention they deserved over perhaps a decade. What we are now wrestling with is how to get the car on the highway and up to speed, both from a technology and a security standpoint. And the challenge will be to keep in front of everyone's minds and make sure that it doesn't get side-railed again once we do fix it.

Senator CANTWELL. Well, I think it is an interesting question, Mr. Chairman, whether it is the nature of those other two agencies, and the information business that they are in, if they might have put higher priorities on protecting their own information.

But nonetheless wouldn't you say that one of the things that the agency should be doing is looking to those other agencies for best practices?

Mr. SENSER. Absolutely, and that is taking place, of course, with myself being detailed from the CIA. But as I mentioned in my statement for the record, we have already gone out to the CIA and brought in somebody to specialize on the protection of sensitive, compartmented information and other very sensitive information.

We have gone out to the NSA and brought somebody in to specialize on security education and awareness, which is one of the most beneficial areas you can focus on in terms of getting a return on your investment. And we have somebody else coming in from the CIA that is going to take over the management of the physical, technical and information security areas, reporting to me.

So we are drawing on the community. We have benchmarked, we have gained best practices, and everybody has been very cooperative and eager to help us get this car back on the road and moving in the right direction.

Mr. DIES. The good news, if there is good news here, Senator, is that other agencies and other businesses know how to do this, and we have to import best practices, not reinvent some of the practices. So whether it is defense in depth from the Defense Department or NSA, CIA, ATF, there are people who are willing to help us and, to date, have been willing to do so when asked.

Senator CANTWELL. I didn't see that quite outlined in your section on security here, but do you have something more detailed here about the steps for—

Mr. SENSER. I do talk in the statement about bringing other professionals in. What I didn't go into detail in the statement on was the specific focus areas that we have identified, as well as the details of the enhancement plan that we have outlined, because of the concern for providing a detailed road map to somebody whose desire it would be to harm the country's interests.

But as I have also mentioned, we are more than happy to talk to the members in private, and we have already given a more detailed briefing to your staffs on these areas and what we are doing to fix them.

Senator CANTWELL. Well, I do have another question about the overall network security, and again I have a sense that the CIA and NSA are up here and the FBI is way down here, again because maybe that mission wasn't clearly detailed.

But do we have great concern today about the security of the system?

Mr. SENSER. Well, again, there are always pros and cons, and Mr. Dies can also comment, but from the standpoint of—

Senator CANTWELL. I am sorry. Your internal network is what I am specifically referring to.

Mr. SENSER. Right, and the good news is that it is an internal network and there is very little connectivity between the FBI system and the outside world, which makes security of that system an easier task to accomplish. The downside is we are not interoperable with a lot of areas in the Government.

Mr. DIES. The FBI is a fairly closed system. We have had the NSA, for example, as late as 90 days ago do a penetration test. So the fort, if I can call it that, is fairly well insulated from the outside. That doesn't do a darn thing for you on the insider threat, however. So if you have an insider inside the fort, a Robert Hanssen or someone like that, having the right layers of defense externally, a defense in depth at the network level, so to speak, is helpful, but insufficient. You have to have those layers inside your systems. You have to have the management systems there and the practices. Those can be strengthened, and should be strengthened, and are part of the 15 recommended actions from Mr. Senser.

Senator CANTWELL. Again, I am surprised at some of this information that we are so far behind. It is going to take more than you two gentlemen, so how do we get the new Director and the mission of the agency to understand the significance of this, both from a security perspective, but also from an ease of use and technology perspective?

Mr. SENSER. From my standpoint, in terms of security the attitude and the approach starts from the top. The Director has got to be very adamant that this is of value, it is important, and that it will be followed in the agency.

As an example, George Tenant came out and said that his value of security in counterintelligence is paramount, and that will be translated throughout the organization based on the values of the Director. And so by ensuring that Mr. Mueller also holds that

value, then it will start from the top and change will begin to happen.

Senator CANTWELL. Thank you, Mr. Chairman. I do believe this is such an important issue that we should continue to monitor this progress and procedures and get more information particularly as it relates to the security of their network and the processes that they are undertaking.

My sense is that you are basically turning a big ship around as it relates to something very critical to the information, and I am not sure I have seen the resources both from a manpower perspective and the mission focus in some of the documents that says we are going to get it turned. But I appreciate your testimony and honesty this morning.

Chairman LEAHY. Thank you.

And I might say while the Senator is still here, Mr. Dies, you mentioned the NSA penetration effort. If we can be briefed—I would suspect that would be in a closed hearing, but to have our secured staff and Senators who want to be briefed on just what happened in that and where we are.

Mr. DIES. No problem.

Chairman LEAHY. I think Senator Cantwell may be one who especially is at that briefing because she has more expertise in this than many of the rest of us, but I know I would be very interested in seeing how that went.

Senator SCHUMER?

Senator SCHUMER. Well, thank you, Mr. Chairman, and I want to thank you for holding the hearing. I apologize to the witnesses for being in and out of the room. They were marking up ILSA, the Iranian and Libyan Sanctions Act, in Banking at the same time that this was going on. I am the sponsor of that.

I want to join my colleagues in asking a whole lot of questions here. I come as somebody who has been a friend of the FBI for a long, long time, but yesterday's revelation that hundreds of FBI firearms and computers have been lost and stolen is not the first bit of trouble we have seen. If it were just this last revelation, one would say, OK, they made a mistake.

But when it is incident after incident after incident and then there is this one, sub-machine guns missing and a computer with classified information, you have to say to yourself what is going on in the FBI? Is something rotten in Denmark?

In a certain sense, it isn't just rifles or sub-machine guns or laptops with classified information that have somehow eluded the FBI; it is basic public trust. When I grew up, I was so proud that America had an FBI, and you would see the TV shows and everything else like that. And now if you look at it, to be honest, the FBI is just taking a beating.

One survey reports that 40 percent of the public views the FBI less favorably than before, while 36 percent express doubts about the honesty of the FBI's methods. That is pretty fundamental and pretty frightening. Another poll showed that Americans have twice as much confidence in their local police as they do in the FBI, even though the most FBI is the most sophisticated and well-financed investigative agency in the world and was once the crown jewel of law enforcement.

I always ask about law enforcement; I care about it. It has been a good part of my career. I asked someone very active in one of the homicide bureaus in New York City what they thought of the FBI, and the answer was that they would rather have a New York City Police detective on a homicide case now than an FBI agent because the FBI agent had so many bosses to report to and so many hoops to jump through that they were losing effectiveness.

I think somebody said it here, but in a certain sense the FBI has become a place where the sum is less than the parts. The individual agents are great. The individual personnel from the bottom to the top are great. Like Orrin Hatch, I have been an admirer of Louis Freeh, even though I have disagreed with him on certain things. But when you add it all up and put it together, something is wrong. Perhaps it has expanded too quickly. Perhaps the focus has been on new things like terrorism, where you have done a very good job. But something is wrong.

But I still have hope. I believe that while the FBI may be down right now, it is certainly not out. The personnel are too good, the tradition is too strong, and the Bureau functions are so much more needed today than they even were 20 or 30 years ago that we still want it to work.

I believe the President's appointment of Bob Mueller will give the FBI just what it needed, a serious, conscientious person who knows how to burrow through, who is very familiar with law enforcement, who doesn't have a big name and a different agenda, but who will roll up his sleeves and get down in there.

I guess what I would say to sum it up in a certain sense is that the FBI's recent struggles remind me of Tiger Woods. He is the greatest golfer in the world, but he gets in a slump, and it is instructive to see what he does when he is struggling. He goes back to the basics. He starts working on his swing and his game. He breaks his swing down, builds it back up, and he comes back better than ever.

With this enormous and now hugely complex agency, that is what we have to do. It is not just a little thing here or a little thing there. It is just too much, and so I believe that the Bureau needs an outside, comprehensive review from all angles. And I know that our Chairman has been pushing this kind of thing, and this hearing is indicative of it.

Last month, Senator Hatch and I introduced the FBI Reform Commission Act. The bill will set up a blue-ribbon commission of law enforcement experts to look at all aspects of the FBI. This is not just an annual check-up. About once every 5 years, at least when you get to be my age, you go to a physician and you get a top-to-bottom. They look at you, they turn you inside out, they poke you in every different place to see how you are. That is what the FBI needs, not every 5 years, but certainly every 20 or so.

That is what this commission is supposed to do. It is more than a tune-up; it is a fundamental and structural examination to look at what kind of overhaul is needed. It will operate outside the FBI. It should be composed of law enforcement experts who don't have an axe to grind.

We do a good job here. There is no one better than the Chairman at being fair in holding hearings, but we can't hold hearings every-

day on every segment of the FBI. That is why I feel this kind of comprehensive look is needed, and I hope we can do it. I have introduced this, as I mentioned, with my friend Orrin Hatch, from Utah. It is hardly partisan. Both of us have been regarded as pro-law enforcement.

I guess my question to all three of you is what is your view—I am not asking you to comment on our specific legislation, but what is your view of the need, given that we have had so many different mistakes, for an outside look by experts, you know, a 6-month or a 9-month look?

I asked Mr. Mueller this, and he is obviously not allowed to say that much right now in the sensitive time that he is, but I think he was very positively disposed toward something like this.

So I would first ask Ray Kelly, who is not with the agency and is somebody who is a great law enforcement leader, and then Mr. Dies and Mr. Senser what they think of that type of idea.

Mr. KELLY. Senator, I think that idea is sound. I must say I have had only positive experiences with the FBI for a long time. The thing that comes most readily to mind is the World Trade Center bombing. I was Police Commissioner of New York when that took place. We worked very closely with the FBI. I have had great admiration for them and a lot of friends of mine are in the Bureau. But I think every organization can use an examination like that. I think it is wise, so I certainly support the concept.

Senator SCHUMER. I would just say to you, Mr. Kelly, an example of how good the FBI is in the World Trade Center bombing and in terrorism. Back in 1993, I had been always focused a little bit on the terrorism issue and I said we are going to have some kind of incident here, and unfortunately it happened much worse than anybody thought in terms of the World Trade Center.

At that point, the FBI, not due to itself—they had been under pressure from Congress and had taken all sorts of people out of counterterrorism and all these other things, and they were really weak. And they built themselves up, and I think everyone who has looked at the counterterrorism measures that the FBI has taken gives them an A or an A-plus, and that is what gives us so much hope in the agency. It just seems that in some of the basic and other more fundamental areas, they do need that reexamination, restructuring and revivification, if you will.

What do you think of it, Mr. Dies? Just a general comment because I know you can't comment on specific legislation.

Mr. DIES. I understand. I am not a law enforcement professional, but I think back to the laboratory at the FBI which got in serious trouble. They brought in an outsider to run it, Dr. Kerr. I think they understand that the base technology they provide to their agents is insufficient. The security things aren't there. As a private citizen, that was a scary thought to me, and perhaps I can help for a couple of years and get them started.

In the security operations, you have a CIA fellow sitting to my left. I think there is value in an agency—whether it is hiring external management for a period of time or whether it is oversight and other ideas, any company, any agency can benefit from ideas and inspection. It is how you choose to do that, and the choice on that is yours.

Senator SCHUMER. Mr. Senser?

Mr. SENNER. Senator, I also agree that outside ideas and perspectives bring value to the organization, so it should be welcomed.

Senator SCHUMER. Mr. Chairman, I thank you. I know these witnesses have been here a long time, as have you. I do have one or two other specific questions and I would ask permission to submit those in writing.

Chairman LEAHY. Thank you, and the record will be open for that.

We will recess for just 2 minutes to give the panels a chance to change. I want to thank Commissioner Kelly, Mr. Dies and Mr. Senser for being here. As you can tell from the questions, we will probably see you again, as we are going to be doing some follow-up. Some of the things we have suggested will have to be done in a classified session and we will arrange a time when we can do that in a secure room.

Mr. Kelly, it is always good to have you here. You have honored law enforcement in each of the hats you have worn and I appreciate you being here.

[The Committee stood in recess from 12:23 p.m. to 12:29 p.m.]

Chairman LEAHY. We will put a statement by Senator Kohl and a statement by Professor Samuel Walker and a September 1999 report by the FBI Law Enforcement Ethics Unit on double standards mentioned in the testimony, in the record.

I am delighted, Mr. Roberts, Mr. Werner, Mr. Perry, and Mr. Kiernan, that you are here. I apologize that it has taken longer than I thought and I appreciate you spending the time to sit here. It is an important hearing. I am already getting calls from a number of the Senate offices that have been watching it on our closed circuit TV, so the hearing is generating a great deal of interest.

Mr. Roberts, why don't we begin with you, sir?

STATEMENT OF JOHN E. ROBERTS, UNIT CHIEF, OFFICE OF PROFESSIONAL RESPONSIBILITY, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Mr. ROBERTS. Mr. Chairman, thank you very much. I appreciate the opportunity to appear before the Committee to discuss serious issues facing the Federal Bureau of Investigation, and in particular what we collectively do and can do to make the FBI better, restoring credibility to this great organization. Of significant importance is the ability of the FBI to conduct aggressive, objective internal investigations. Therefore, the protection of those employees assigned internal affairs work for the FBI needs to be considered.

I am grateful to be an FBI employee. I am proud to be associated with the tremendous men and women of this great organization. The efforts of the agents and support personnel are remarkable, and the work that is conducted by this organization everyday is impressive.

I am currently the Unit Chief for Internal Investigations in the Office of Professional Responsibility, the internal affairs component of the FBI. The support and agent employees assigned to OPR are competent, dedicated and hard-working. I am proud to serve with them.

Resources in the OPR of the FBI, not unlike any other organization, are strained. In what was a record number of internal investigations in 2000, OPR supervisory special agent positions were recently reduced by three. This is a reduction difficult to understand, given the record number of internal investigations conducted by OPR and the need to conduct ethics training.

Like so many employees in the FBI, I have served in a number of assignments. In 1995, I was named as one of two inspectors in charge of the Ruby Ridge investigation, an investigation conducted under the direction of the OPR for the Department of Justice and the Acting United States Attorney for the District of Columbia.

Today, you have before you individuals who have substantial experience in FBI internal affairs investigations. I am concerned with the perception of a double standard in the FBI's disciplinary process and the consequences for those FBI employees who conduct such investigations. I believe the ability to conduct complete, objective and competent investigations and the leadership of the FBI has been questioned.

Of concern to me, and what should be of concern to others is the apparent deference paid to Senior Executive personnel who are found to have violated FBI policy, rules and regulations. There is the perception that a double standard of punishment exists in the FBI. This should be alarming to all of us because not only is it fundamentally unfair, but more important, if the rank-and-file of any law enforcement organization believes that their executive management condones or approves of misconduct, that is a precursor for corruption, and that, sir, is destructive.

I would like to briefly comment on two high-profile FBI internal investigations, the Ruby Ridge incident and subsequent investigations into allegations of misconduct on the part of FBI employees and a retirement party attended by senior executives who falsely claimed reimbursement for travel to that event.

Most people are aware of the August 1992 incident at Ruby Ridge, Idaho, involving the FBI and other law enforcement agencies. In 1993, following a trial in this matter, the Department of Justice and the FBI initiated inquiries into numerous allegations of misconduct by Government personnel in connection with the standoff at Ruby Ridge. These inquiries resulted in disciplinary action in January 1995 against numerous FBI employees.

In May 1995, the Department of Justice Office of Professional Responsibility received a letter from one of the FBI employees disciplined in that matter alleging that the person selected by the FBI to head the Ruby Ridge inquiry had manipulated the inquiry to find scapegoats and to avoid holding higher-ranking FBI officials responsible for the August 1992 events at Ruby Ridge, and that the person heading the inquiry had purposefully attempted to steer the inquiry away from any findings unfavorable to higher-level executives in the FBI.

In May 1995 while I was serving in the Boston Division of the FBI, personnel from OPR, Justice Department, met with the Director of the FBI, telling him that an investigation into these most recent allegations was necessary. The Department of Justice personnel from OPR requested Mr. John L. Werner, to my left, and me to conduct the investigation. The Director of the FBI agreed to

this request and ordered that Mr. Werner and I conduct the investigation, along with the Office of Professional Responsibility, Department of Justice.

In May 1995, we were assigned to the Department of Justice, and shortly thereafter we were named inspectors in charge of the Ruby Ridge investigation, the second investigation of the Ruby Ridge incident. After reviewing the reports prepared during the first Ruby Ridge investigation, Mr. Werner and I concluded that crucial interviews were not conducted and very serious allegations of misconduct not thoroughly investigated.

These investigative failures resulted in a flawed investigative report. In my opinion, had a thorough and competent investigation been conducted in the first investigation, there would not have been a need for a second investigation.

For example, crucial interviews were not conducted of all employees assigned to the Strategic Information Operations Center, commonly known as the SIOP. It is the command center for the FBI which was staffed 24 hours a day during the Ruby Ridge incident by numerous employees. Interviews of employees assigned to the SIOP were conducted, but there was not a written record made of those interviews.

Additionally, information surfaced during the first investigation that there was an After Action Conference following the Ruby Ridge incident and an After Action Report may have been prepared. The After Action Report could not be located and the investigation did not pursue that evidence. As we know now, the report was destroyed and a senior executive was convicted for his part in the destruction of that document.

In approximately September 1995, this investigation was referred to the Acting United States Attorney for the District of Columbia and continued until July 1997. This investigation again resulted in the conviction of an FBI senior executive for the destruction of the After Action Report.

At the conclusion of the criminal investigation, I requested that the Acting United States Attorney for the District of Columbia refer to the Office of Professional Responsibility, Department of Justice, certain allegations of misconduct that arose during the investigation but did not rise to the level warranting criminal prosecution. Those referrals were made.

In September 1997, under the direction of the Department of Justice, there was an administrative investigation commenced into those allegations. In June 1999, the investigation was completed and the findings, along with recommendations for discipline, were forwarded to the Department of Justice, Justice Management Division, by the Justice Department OPR. In January 2001, the Assistant Attorney General for Administration of the Department of Justice found no misconduct on the part of FBI employees.

In the Ruby Ridge matter, Mr. Werner and I investigated allegations of serious misconduct on the part of some senior executives who were very popular individuals. As such, they had a great deal of support from many in the FBI. Consequently, almost immediately upon being assigned to the Ruby Ridge investigation, a senior executive in the Boston Division where I was assigned de-

manded that I return to the Boston Division and discontinue my assignment to the Ruby Ridge investigation.

When I told him that was not possible, he threatened to go to the Deputy Director of the FBI and have me removed from the investigation. This senior executive questioned the need for the investigation and his behavior escalated to where he wanted virtually nothing to do with me and then set out to take out his anger on my wife, a support employee in the Boston Division. The senior executive's actions against my wife and me required that we be transferred from that division.

Throughout the assignment to the Ruby Ridge investigation, Mr. Werner and I received what we perceived to be threats from senior executives. We were told that we did not work for the FBI.

I see that my time is up.

Chairman LEAHY. No, that is all right. Go ahead.

I was just going to say nobody is more cooperative with photographers than I am, but why don't you take the pictures you need and then let us have the witness table to ourselves? You have become sort of an integral part of it. Using 180-, 200-, 300-millimeter lenses, you don't have to be right on top of the witnesses. It is pretty distracting for those of us up here. If you could do it in a way that you don't block either the witnesses or us, you are welcome to stay, but the hearing is primarily so that the Senate can get this information.

Go ahead, Mr. Roberts.

Mr. ROBERTS. Mr. Werner received what we perceived to be threats from some senior executives. We were told that we did not work for the FBI, that our assignment to the Ruby Ridge investigation could have an impact on our careers, and that being assigned to the investigation would not be good for us in the end. At one point, a retired senior executive made the comment that the assignment to the Ruby Ridge investigation was not good for my career.

I bring this information to light just to illustrate the effort on the part of some senior executives, not all, but some to have Mr. Werner and me removed from the Ruby Ridge investigation. What occurred during the Ruby Ridge investigation should not be viewed as an isolated incident. There are various subtle and not so subtle actions taken which may impact an employee's career.

The second one was a retirement party and was initiated in late 1997 based on allegations that senior executives traveled to the retirement party and submitted expense vouchers containing false information. This investigation found that false vouchers were submitted by these individuals, but the adjudication findings by their peers were that these employees failed to pay attention to detail. And they received letters of censure, a relatively light disciplinary action. Similar cases of voucher fraud committed by non-Senior Executive personnel result in different findings, harsher punishment.

It is significant to point out that there has been a change to the disciplinary process so that senior executives now are part of one disciplinary process for the FBI, which is a tremendous effort and I think it is applauded by all.

I believe that arrogance is a great part of the problem in the FBI today. Oversight is the first step and, for most, a welcome step in

renewing confidence in the FBI. The cure for the FBI's problems is strong leadership. What we in the FBI have to learn is that protecting the organization rather than acknowledging errors up front is not always the best course of action. Hoping that problems will go away or that no one will find out about the mistakes is destructive.

Although we in the FBI refer to the organization as "our FBI," in fact, the FBI belongs to all of us in this great country. We serve the American people and they have an absolute right to an FBI that is corruption-free and operates at a high expectation of excellence.

The Ruby Ridge and the retirement party matters completely destroy any concept of fundamental fairness. In my opinion, it is one thing to believe that you are the greatest law enforcement organization in the world, but it is quite another to voice that opinion. I believe that such statements offend every other law enforcement officer in the world who places his or her life on the line each and every day. We need to let our actions and accomplishments speak to our greatness.

It was during this Committee's hearing in June 2001 that whistleblower protection for FBI employees was discussed. I do not have a great deal of confidence in the protection of FBI employees for whistleblower complaints. This lack of confidence is due to in large part to a senior executive representing to me that he had a visceral dislike for the whistleblower statute and feels it is a bad law.

I think the belief of this individual is that employees are able to make allegations that are later proven to be unsupported by evidence and the employee is protected for those disclosures. I do not believe that anyone is going to admit to retaliating against an employee for making protected disclosures, and it is rare that a smoking gun can be found which would prove any act of retaliation.

This concludes my testimony. I am more than happy to answer any questions you may have.

[The prepared statement of Mr. Roberts follows:]

STATEMENT OF JOHN E. ROBERTS, UNIT CHIEF, OFFICE OF PROFESSIONAL RESPONSIBILITY, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Mr. Chairman, Senator Hatch, and members of the Committee on the Judiciary:

I appreciate the opportunity to appear before the Committee today to discuss what I believe are serious issues facing the Federal Bureau of Investigation (FBI), and, in particular, what we can collectively do to make the FBI better, restoring credibility to this great organization. Of significant importance is the ability of the FBI to conduct aggressive, objective internal investigations of FBI employee misconduct. Therefore, the protection of those FBI employees assigned to conduct the internal affairs work for the FBI needs to be considered.

I am grateful to be an FBI employee and I am proud to be associated with the men and women of this great organization. The efforts of the agents and support personnel are remarkable and the work that is conducted by this organization every day is impressive.

I am currently the Unit Chief (UC) in the Office of Professional Responsibility (OPR), FBI, responsible for internal investigations, a position I have held since July 1997. I have served in the Louisville, Miami and Boston Divisions of the FBI, as a Supervisory Special Agent (SSA) in the OPR, FBI, the Inspection Staff, Inspection Division, and as one of two Inspectors in Charge of the Ruby Ridge investigation under the direction of the OPR, Department of Justice (DOJ) and the Acting United States Attorney for the District of Columbia.

The OPR, FBI is composed of two Internal Investigative Units (IfUs), two Adjudication Units (AUs), the Law Enforcement Ethics Unit (LEEU), and an Administrative Unit, all staffed by competent, hard working and dedicated SSAs and sup-

port employees. The OPR operates under the direction of an Assistant Director (AD) and a Deputy Assistant Director (DAD). My responsibility is to review all allegations of employee misconduct, determine the proper course of action, and to conduct, or, direct the conduct of all FBI internal investigations. I am the first phase in the disciplinary process of the FBI. At the conclusion of the internal investigative phase, the investigative results are reviewed for completeness by the IIUs and are referred to the AUs for a decision on the necessity for discipline. Approximately 75% of all internal investigations are delegated to field and FBI Headquarters (FBIHQ) divisions for investigation. The remaining 25% of the internal investigations are conducted by the IIUs, because I have determined that there is an appearance of a conflict, or, actual conflict with the field or FBIHQ division conducting the investigation, the allegation of misconduct involves a Senior Executive Service (SES) employee, or, senior management of the division, the allegation of misconduct appears to be a matter that may generate substantial public interest, and when field divisions lack sufficient resources and/or request OPR's assistance in conducting an investigation. Resources in OPR, not unlike any other organization, are strained. In what was a record number of internal investigations in 2000, OPR SSA positions were recently reduced by three. This is a reduction difficult to understand, given the record number of investigations conducted by OPR, the need for an internal affairs component, and the need for the LEEU to conduct ethics training.

You have before you today individuals who have substantial experience in FBI internal affairs investigations. I am employee who is concerned with perception of a double standard in the disciplinary process in the FBI and the consequences for those FBI employees who conduct such investigations. I believe the ability to conduct complete, objective and competent investigations and the leadership of the FBI has been questioned. Of concern to me is the apparent deference paid to SES personnel who are found to have violated FBI policy, rules and regulations. Although it is not likely that non-SES FBI employees know the results of SES internal investigations and the discipline these executives receive, it is the perception that there is a double standard of punishment in the FBI. This should be alarming to all of us, because if the rank and file of any law enforcement organization believe that their executive management condones or approves of misconduct, that is a precursor for corruption.

Therefore, I would like to briefly comment on two high-profile FBI internal investigations. The first is the Ruby Ridge incident and the subsequent investigation into allegations of misconduct on the part of FBI employees. In August 1992, the incident at Ruby Ridge, Idaho, involving the FBI and other law enforcement agencies, occurred. In 1993, following the trial where Randall Weaver and Kevin Hams were acquitted, the DOJ and the FBI initiated inquiries into numerous allegations of misconduct by government personnel in connection with the standoff at Ruby Ridge. These inquiries eventually resulted in disciplinary action in January 1995, against numerous FBI personnel.

On May 3, 1995, the OPR/DOJ received a letter from one of the FBI employees disciplined as a result of this employee's actions at Ruby Ridge. The employee alleged that the person selected by the FBI to head the inquiry which resulted in the discipline of this employee, had been manipulated to find scapegoats and to avoid holding higher-ranking FBI officials responsible for the August 1992 events at Ruby Ridge. In particular, this employee alleged that the person heading the inquiry had purposely attempted to steer the inquiry away from any findings unfavorable to higher level executives of the FBI.

In May 1995, while serving in the Boston Division of the FBI, personnel from the OPR/DOJ met with the Director of the FBI and advised the Director that an investigation into the allegations raised in the disciplined FBI employee's letter was necessary. The OPR/DOJ personnel requested the Director to assign Mr. John L. Werner and me to conduct the investigation. The Director ordered that Mr. Werner and I conduct the investigation, and, in May 1995, we were assigned to the OPR/DOJ, and shortly thereafter named as Inspectors in Charge of the Ruby Ridge investigation, the second investigation of the Ruby Ridge incident, an investigation that was administrative in nature. Mr. Werner and I reviewed the reports prepared during the first Ruby Ridge investigation and concluded that significant interviews were not conducted and significant allegations of misconduct were not thoroughly investigated. These investigative failures resulted in flawed investigative results. In my opinion, had a thorough and competent investigation been conducted, there would not have been a need for this second investigation. For example, significant and critical interviews were not conducted of all employees assigned to the Strategic Information Operations Center (SIOC), the command center for the FBI which was staffed 24 hours a day, during the Ruby Ridge incident. Those interviews, of a few employees assigned to the SIOC, were not recorded in written form, either in signed,

sworn statements or FD-302s, which is the FBI's report of interview form. Additionally, information had surfaced that there was an After Action Conference following the Ruby Ridge incident and a After Action Report may have been prepared. The After Action Report could not be located and the investigation did not pursue that evidence. As we now know, the report was destroyed and an SES employee was convicted for his part in the destruction of that document.

The Ruby Ridge investigation to which Mr. Werner and I were assigned became a criminal investigation in approximately September 1995, and continued under the direction of the Acting United States Attorney for the District of Columbia. That investigation continued until July 1997, and resulted in the conviction of an FBI SES employee. At the conclusion of the criminal investigation, I requested that referrals be made by the Acting United States Attorney for the District of Columbia to the OPR/DOJ of serious misconduct issues that were noted during the criminal investigation and which did not warrant criminal prosecution. These referrals were made and an administrative investigation was initiated under the direction of the OPR/DOJ in approximately September 1997. This investigation addressed serious misconduct allegations against numerous FBI employees, to include seven SES employees. In June 1999, the investigation was completed and the findings, along with recommendations for discipline were forwarded by OPR/DOJ to the Justice Management Division, DOJ, for adjudication. In January 2001, the Assistant Attorney General for Administration, DOJ, found that there was no misconduct on the part of FBI employees. I find this conclusion to be outrageous and I believe anyone who reviews this matter will find the conclusions alarming.

The Ruby Ridge investigation to which Mr. Werner and I were assigned investigated allegations of serious misconduct on the part of some SES personnel who were popular individuals. As such, they had a great deal of support from many in the FBI. Consequently, almost immediately upon being assigned to the Ruby Ridge investigation, an SES employee in the Boston Division where I was assigned, demanded that I return to the Boston Division and discontinue my assignment to the Ruby Ridge investigation. When I told him that was not possible, he threatened to go to the Deputy Director of the FBI and have me removed from the investigation. This SES employee questioned the need for the investigation and his behavior escalated to where he wanted nothing to do with me and then set out to take his anger out on my wife, a support employee also assigned to Boston Division. This SES employee's actions against my wife and me required that we be transferred from that division. Throughout our assignment to the Ruby Ridge investigation, Mr. Werner and I received, what we perceived to be threats from some SES personnel. We were told that we did not work for the FBI, that our assignment to the Ruby Ridge investigation could have an impact on our careers, and that being assigned to the investigation would not be good for us in the end. At one point, a retired SES person made the comment that the assignment to the Ruby Ridge investigation was not good for my career. I bring this information to light to illustrate the effort on the part of some SES personnel to have Mr. Werner and me removed from the Ruby Ridge investigation.

What occurred during the Ruby Ridge investigation should not be viewed as an isolated incident. There are various subtle and not so subtle actions taken which may impact an employee's career. For example, within the last year an SES employee made unprofessional comments to two Inspectors during an inspection. The comments could have been interpreted as a threat to influence the careers of the Inspectors. Additionally, a review of career board activities will likely reveal that some career board members who have been subjects of internal investigations will sit in judgement of the investigator who conducted the internal investigation.

The second investigation I will briefly discuss was initiated in late 1997, based upon allegations that seven SES personnel traveled to a retirement party and submitted expense vouchers containing false information. This investigation found that false vouchers were submitted by these individuals, but the adjudication findings by their peers were that these employees failed to pay attention to detail and they received letters of censure, a relatively light disciplinary action. Violations such as voucher fraud committed by non-SES personnel result in different findings and harsher punishment.

It is significant to point out that investigations of alleged misconduct as that found in the Ruby Ridge and retirement party matters, can likely result in an employee not being promoted, not receiving awards, and not receiving a requested transfer. In the two cases I just discussed, some of the SES employees received promotions and thousands of dollars in cash awards during the pendency of the investigations. Recently, the SES disciplinary policy was changed so that now the FBI has one disciplinary process for all employees.

It is my impression that many in the FBI know of the problems the organization faces. I believe that arrogance is a great part of the problem in the FBI today and that oversight is the first step in renewing confidence in the FBI. All of us in the FBI should welcome oversight. The cure for the FBI's problems is strong leadership. I am not sure if a separate Inspector General will be a better solution for the FBI, or, if the Inspector General for DOJ is the solution. What we in the FBI have to learn is that protecting the organization is not always the best course of action. It is better to acknowledge errors up front, rather than hoping they will go away or that no one will find out about the mistakes. Although we in the FBI refer to the organization as our FBI, in fact, the FBI belongs to all of us in this great country. We serve the American people and they have a right to an FBI that is corruption free and operates at a high expectation of excellence. In my opinion, it is one thing to believe that the you are the greatest law enforcement organization in the world, but it is quite another to voice that opinion. I believe that such statements offend every other law enforcement officer in the world who places his or her life on the line each and every day. We need to let our actions and accomplishments speak to our greatness.

It was during this Committee's hearing on June 20, 2001, that Whistleblower protection for FBI employees was discussed. I do not have a great deal of confidence in the protection of FBI employees for Whistleblower complaints. This lack of confidence, in a large part, is due to a senior executive of the FBI telling me that he has a visceral dislike for the Whistleblower statute and feels that it is a bad law. I think his belief is that employees are able to make allegations that are later proven to be unsupported by evidence, and the employee is protected. Although I do not share this belief, I do not believe that anyone is going to admit to retaliating against an employee for making protected disclosures and it is rare that a "smoking gun" can be found.

This concludes my prepared testimony. I am happy to answer any questions you may have.

Chairman LEAHY. Thank you, Mr. Roberts.

I would note for the record that I and other members of this Committee discussed with the soon to be nominated Director of the FBI, Mr. Mueller, the fact that there would be this panel and probably subsequent panels testifying. And I asked for his personal assurance that he would make absolutely sure retaliation did not take place. I also made it very clear that there would be a very strong bipartisan reaction from Senator Grassley, myself and others if that happened.

I appreciate your testimony, Mr. Roberts. If you could stand by, we will go to Mr. Werner.

**STATEMENT OF JOHN WERNER, BLUE SKY ENTERPRISES OF
NORTH CAROLINA, INC., CARY, NORTH CAROLINA**

Mr. WERNER. First, I want to thank the Committee and the Chairman for the invitation to testify here today. I am a self-employed general contractor in Cary, North Carolina. After more than 27 years of service, I retired from the FBI in 1999. During my career, I investigated criminal wrongdoing in Washington, D.C., served as a foreign counterintelligence supervisor, worked in the Office of Professional Responsibility as a supervisor, and supervised the Raleigh resident agency until my retirement.

Additionally, I had extensive experience in internal affairs investigations, beginning about 1985. This included my being the supervisor responsible for the investigation of alleged wrongdoing against then-FBI Director William Sessions and his executive assistant.

In another case, with Mr. Roberts, as he has said, I was ordered back from my office in Raleigh to investigate cover-up allegations

in the Ruby Ridge matter. I was also involved in numerous other internal investigations of FBI management.

I realize we are here today to address FBI management reforms and to discuss FBI problems and potential fixes for these problems. It is important not to forget the dedicated hard work performed by 26,000 FBI employees who successfully investigate thousands of cases each year. There are things broken in the FBI, primarily management-related, but the basics of how agents conduct their investigations are not broken. The rank-and-file employees are hitting on all cylinders, albeit frustrated over the inefficiencies of management, broken or non-existent information systems, and concerns over being held to a higher standard than senior management.

Management problems in the FBI begin with the Senior Executive Service. It would not be fair to suggest all members of the SES have been engaged in abuses of authority described herein because the majority are sincere, dedicated law enforcement professionals who have made many sacrifices for the Bureau. My remarks are being addressed to that vocal minority of SES members, often referred to as "the club" by street agents, who are motivated by self-preservation and self-interest at any cost. For the most part, these SES personnel are not motivated by the best interests of the FBI.

In testimony before this Committee, former Senator John Danforth suggested that an element of management misconduct concerning the failure of disclosing wrongdoing has its roots in employees' desire not to embarrass the Bureau. While there may be an element of this involved, I would suggest that protecting their self-interest is primary and the excuse of not embarrassing the Bureau is a convenience to justify that misconduct.

Hiding behind a wall of arrogance, senior managers hold the belief that they always know what is best for the Bureau. These SES members are intolerant of any suggestion that their way is wrong. They use intimidation and retaliation against anyone who would be so impertinent to challenge their interest.

SES personnel have retaliated against agents who have been assigned investigations of SES misconduct. Special Agent Roberts has had his career seriously impaired because of his determined hard work on a number of high-profile cases involving SES personnel. These retaliatory practices send a chilling message to any other agent who might be charged with similar investigations.

There are instances where SES executives have taken action or avoided action to protect their own from career perils. In the first investigation of Ruby Ridge, SES inspectors sought to protect certain fellow peers from administrative discipline by conducting a sloppy and incomplete investigation. At the same time, they were most willing to hang lower-tier employees out to dry.

Another way the SES members protect themselves is by handling SES misconduct adjudications differently from other cases. Until recently, the SES Board adjudicated SES matters. The discipline for SES infractions was typically somewhat less harsh to much less harsh than that given to non-SES employees charged with the same offense. This double standard has debilitated rank-and-file employees' morale and, as will be noted later, is one of the reasons

quality agents are disinclined to enter the career development program.

There are many recognized root problems in the management structure of the FBI that senior management has neglected to seriously address. The SES staff resists changing a system that benefits them and ensures excessive headquarters control over field operations. These problems have created disincentives that dissuade quality agents from participating in career development.

There are significant barriers that discourage agents from wanting to participate in career development. For example, to promote to assistant director, an agent must make a minimum of six career moves, most requiring family relocation, and at least three tours of duty at headquarters. This gives headquarters senior management a stranglehold over these rising agents, requiring absolute allegiance to the SES staff.

Another FBIHQ issue concerns SES personnel prohibiting non-agent professional staff from assuming FBI positions that historically have been filled by agents. Agents are expensive, scarce resources who are better utilized in the field. Simply stated, there is an abundance of FBI positions currently filled by agents that could be more efficiently and economically filled by support staff on a more consistent and permanent basis.

In 1998, Special Agent Carl Christiansen, then the Louisville Division assistant special agent-in-charge, ASAC, was tasked with conducting a survey of the executive development selection program to determine what impacts an agent's decision to participate in management. The following are a few of the results.

There are far more disincentives than incentives in participating in career development. There are too many transfers, inadequate financial incentives, et cetera. FBIHQ assignments were viewed as very negative because headquarters work was viewed as clerical, devoid of supervisory responsibility, and did little to prepare an agent for future assignments. Agents expressed a reluctance to become involved in a management system they believed to be hypocritical and lacking ethics.

SA Christiansen and his Committee identified some of the underlying reasons for agents' disinterest in career development. The FBI's organizational structure, culture and approach to management are no longer suited to today's world. They recommended that the Director needed to make drastic changes to the structure and philosophy of management to allow the organization to adapt more readily to a quickly changing environment.

When SA Christiansen presented the survey recommendations to a group of 15 SES employees, the proposals were scoffed at. To date, only a few minor changes have been made to the CDP as a result of the survey. Recently, the outgoing president of the FBI Agents Association, John Sennett, stated in a letter in his president's column in the FBIAA newsletter, "Along with better information automation, the FBI must retool. We must reengineer our administrative and investigative practices, keep what is worth keeping. We also have to be aggressive in throwing away outdated and cumbersome administrative practices that drag down even the best and most energetic investigator."

I fully agree with both SAs Christiansen and Bennett. A holistic overhaul of the entire system is needed, starting with the multi-tiered, bloated headquarters structure which is not necessary. The review might start with an eye toward expanding the management career track in the field to enable a street agent to rise to ASAC without a transfer to headquarters. New practices along these lines may begin to attract the FBI's best and brightest into management.

The blue-ribbon commission proposed by this Committee, intended to examine all aspects of FBI operations, is a positive step toward revamping the current system. I would encourage the commission to research the pros and cons of a separate pay system for Federal law enforcement. The Office of Personnel Management researched this in 1993 at the direction of Congress and issued a report.

The management survey I mentioned above found pay compression at the top as a disincentive to career development. In addition, the survey shows that agents believe that anyone who volunteers to be a manager will become one because they do not see a valid performance appraisal system that measures management attributes. An overhaul of the pay system would address pay compression and performance appraisal issues that are of great concern to the FBI, the FBI Agents Association, and other Federal law enforcement agencies.

Due to recent FBI management failures, there has been a call for increased oversight over the FBI's internal watchdog functions. The oversight options are as follows: one, continue to operate the FBI's OPR Division in its present form, with the addition of an oversight function by the Senate Judiciary Committee or similar body. Two, expand the oversight of the Office of Inspector General, Department of Justice, to assume the functions of the FBI's OPR. And, three, create an Office of Inspector General in the FBI.

On June 20, 2001, Senate bill 1065 was introduced, calling for the creation of an inspector general for the FBI. Last week, Attorney General John Ashcroft expanded the OIG/DOJ authority to investigate all internal matters for both the FBI and Drug Enforcement Administration. As a practical matter, because of the Attorney General's action, I believe only the last two options remain viable.

In considering these two approaches, I favor the FBI IG concept, with a very important caveat. The FBI IG's investigative staff should be comprised of FBI personnel. Based on my extensive FBI internal affairs experience, I strongly believe that FBI agents can best effectively investigate their own. In the FBI's OPR history, the office has never failed to conduct aggressive, hard-hitting investigations of misconduct, regardless of the subject's position.

The FBI's OPR has proven its independence and I am confident that the office would be loyal to the mission of the IG. Additionally, using FBI personnel who are already in place is a more cost-effective approach. This is especially significant when compared to increasing the \$42 million budget of the OIG/DOJ office for additional investigators, training and staff to handle the increased workload.

The FBI IG approach also preserves an increased element of independence for the FBI over the OIG.

Chairman LEAHY. Mr. Werner, I apologize, but I am going to have to ask you sum up because we had to leave here at 12:30 and it is now 12:55. So we are running into a little bit of a problem.

Mr. WERNER. The only point I wanted really to make here is the fact that the independent office within the FBI, the IG office within the FBI, preserves an element of independence that I think is crucial to the FBI's functioning as an investigative agency responsible for the investigation of Federal—

Chairman LEAHY. And you don't see that as contradictory when you said earlier that many who say they are protecting the Bureau are actually protecting each other?

Mr. WERNER. Sir, I believe that if you charge an office with that responsibility and it is clear from the Director and senior management that they have unfettered access to employees and are given the green light to do aggressive, hard-hitting investigations, it can be very effective, and has been effective in the past.

Chairman LEAHY. As you know, that is one of the things we are going to have to wrestle with, so your statement is extremely valuable to us. We are asking you for your expertise, having been there. We look at it from the outside. You have been there on the inside. [The prepared statement of Mr. Werner follows:]

STATEMENT OF JOHN WERNER, BLUE SKY ENTERPRISES OF NORTH CAROLINA, INC.,
CARY, NORTH CAROLINA

I want to thank the Committee for the invitation to testify.

BACKGROUND

I am a self-employed general contractor in Cary, N.C. After more than 27 years of service, I retired from the FBI in 1999. During my Federal Bureau of Investigation (FBI) career, I investigated criminal matters in Washington, D.C., served as a Foreign Counterintelligence supervisor, worked in the Office of Professional Responsibility (OPR) as a supervisor, and supervised the Raleigh Resident Agency until my retirement. Additionally, I had extensive experience in internal affairs investigations beginning about 1985. This included my being the supervisor responsible for the investigation of alleged wrongdoing against then FBI Director William Sessions and his executive assistant. In another case, Special Agent (SA) John Roberts and I were ordered back from our respective field offices to investigate cover-up allegations in the Ruby Ridge matter. I was also involved in numerous other internal investigations of FBI management.

MANAGEMENT ISSUES, ETHICAL STANDARDS

I realize we are here today to address FBI management reforms, discuss FBI problems and potential fixes for these problems. It is important not to forget the dedicated hard work performed by the more than 26,000 FBI employees, who successfully investigate thousands of cases each year. There are things broken in the FBI, primarily management-related, but the basics of how agents conduct their investigations are not broken. Page 1 of 8

The rank and file employees are hitting on all cylinders, albeit frustrated over the inefficiencies of management, broken or nonexistent information systems, and concerns over being held to higher standards of conduct than senior management.

Management problems begin with the FBI's Senior Executive Service (SES) personnel. It would not be fair to suggest all members of the SES have been engaged in abuses of authority described herein, because the majority are sincere, dedicated law enforcement professionals who have made many sacrifices for the Bureau. My remarks are being addressed to that vocal minority of SES members, often referred to as the "Club" by street agents, who are motivated by self-preservation and self-interest at any cost. For the most part, these SES personnel are not motivated by the best interest of the FBI.

In his testimony before this Committee, former Senator John Danforth suggested that an element of management misconduct, concerning the failure of disclosing wrongdoing, has its roots in the employees' desire to "not embarrass the Bureau."

While there may be an element of this involved, I would suggest that protecting their self-interest is primary, and the excuse of “not embarrassing the Bureau” is a convenience to justify their misconduct. Hiding behind a wall of arrogance, senior managers hold the belief that they always know what is best for the Bureau. These SES members are intolerant of any suggestion that their way is wrong. They use intimidation and retaliation against anyone who would be so impertinent as to challenge their interests.

SES personnel have retaliated against agents who have been assigned investigations of SES misconduct. Special Agent Roberts, who is here today, has had his career seriously impaired because of his determined hard work on a number of high profile cases involving SES personnel. These retaliatory practices send a chilling message to any other agent who might be charged with similar investigations.

There are incidences where SES executives have taken action or avoided action, to protect their own from career perils. In the first investigation of Ruby Ridge, SES Inspectors sought to protect certain fellow peers from administrative discipline by conducting a sloppy and incomplete investigation. At the same time, they were most willing to hang lower tier employees “out to dry.” Another way the SES members protect themselves is by handling SES personnel misconduct adjudications differently from other cases. Until recently, the SES Board conducted SES adjudications. The discipline for SES infractions was typically somewhat less harsh to much less harsh than that given to non-SES employees charged with the same type of offense. This double-standard has debilitated rank and file employees’ morale and, as will be noted later, is one of the reasons quality agents are disinclined to enter the Career Development Program (CDP).

MANAGEMENT STRUCTURE OVERHAUL

There are many recognized root problems in the management structure of the FBI that senior management has neglected to seriously address. The SES staff resists changing a system that benefits them and ensures excessive headquarters control over all field operations. These problems have created disincentives that dissuade quality agents from participating in the CDP.

There are significant barriers that discourage agents from wanting to participate in career development. For example, to promote to the level of Assistant Director (AD), an agent must make a minimum of six career moves, most requiring family relocations, and at least three tours must be conducted at FBIHQ. This gives headquarters senior management a stranglehold over these rising agents, requiring absolute allegiance to the SES staff. In addition, these frequent transfers do not give the Bureau ample time to judge the management ability of its managers.

Another FBIHQ issue concerns SES personnel prohibiting non-agent professional staff from assuming FBIHQ positions that historically have been filled by agents. Agents are expensive, scarce investigative resources who are better utilized in the field. Simply stated, there is an abundance of FBIHQ positions, currently filled by agents, which could be more efficiently and economically filled by support staff in a more consistent and permanent basis.

In 1998, Special Agent Carl Christiansen, then the Louisville Division Assistant Special Agent in Charge (ASAC), was tasked with conducting a survey of the Executive Development Selection Program (EDSP) to determine what impacts an agent’s decision to participate in management. The following is a sampling of the survey results:

- There are far more disincentives than incentives to participating in the CDP. There are too many transfers, inadequate financial incentives, etc.;
- FBIHQ assignments were viewed as very negative because headquarters work was viewed as clerical, devoid of supervisory responsibility, and did little to prepare an agent for future assignments;
- Agents expressed reluctance to become involved in a management system they believed to be hypocritical and lacking ethics.

SA Christiansen and his Committee identified some of the underlying reasons for agents’ disinterest in the CDP. The FBI’s organizational structure, culture and approach to management are no longer suited to today’s world. They recommended that the Director needed to consider drastic changes to the structure and philosophy of management to allow the organization to adapt more readily to a quickly changing external environment. When SA Christiansen presented the survey recommendations to a group of 15 SES employees, the proposals were “scoffed” at. To date, only a few minor changes have been made to the CDP as a result of the survey.

Recently the outgoing President of the FBI Agents Association (FBIAA), SA John J. Sennett, stated in the “President’s Column” in the Spring 2001 FBIAA newsletter,

“Along with better information automation, the FBI must re-tool. We must re-engineer our administrative and investigative practices. Keeping what is worth keeping, we also have to be aggressive in throwing away outdated and cumbersome administrative practices that drag down even the best and most energetic investigator.”

I fully agree with SA's Christiansen and Sennett. A holistic overhaul of the entire system is needed. This should begin with a critical evaluation of the true needs of FBIHQ. For example, the multi-tiered, bloated headquarters structure is not necessary. The review might start with an eye toward expanding the management career track in the field to enable a street agent to rise to ASAC without a transfer to headquarters. New practices, along these lines, may begin to attract the FBI's “best and brightest” into management. The “Blue Ribbon” commission proposed by Senate Bill 1074 intended to examine all aspects of FBI operations is a positive step toward revamping the current system.

I would encourage the commission to research the pros and cons of a separate pay system for federal law enforcement. The Office of Personnel Management researched this matter in 1993 at the direction of Congress and was the subject of a report, entitled “Report to Congress A Plan to Establish a New Pay and Job Evaluation system for Federal Law Enforcement Officers.” The management survey, mentioned previously, found pay compression at the top Page was a disincentive to CPD participation. In addition, the survey showed that agents believe that anyone who volunteers to be a manager will become one, because they do not see a valid performance appraisal system that measures management attributes. An overhaul of the pay system would address pay compression and performance appraisal issues that are a great concern to the FBI, FBIHQ, and other federal law enforcement agencies.

FBI OVERSIGHT

Due to recent FBI management failures there has been a call for increased oversight over the FBI's own internal watch dog functions. The oversight options are the following:

1. Continue to operate the FBI's OPR Division in its present form with the addition of an oversight function by the Senate Judiciary Committee or a similar body;
2. Expand the oversight of the Office of Inspector General, Department of Justice (OIG/DOJ) to assume the functions of the FBI's OPR; and
3. Create an OIG in the FBI.

On June 20, 2001, Senate Bill 1065 was introduced calling for the creation of an Inspector General (IG) for the FBI. Last week, Attorney General John Ashcroft expanded the OIG/DOJ authority to investigate all internal matters for both the FBI and the Drug Enforcement Agency. As a practical matter, because of the Attorney General's action only the last two options remain viable.

In considering these two approaches, I favor the FBI IG concept with a very important caveat: the FBI IG's investigative staff should be comprised of FBI personnel. Based on my extensive FBI internal affairs experience, I strongly believe that only FBI agents can most effectively investigate their own. In the FBI's OPR history, the office has never failed to conduct aggressive, hard-hitting investigations of misconduct, regardless of the subject's position. For example, other agents and I conducted a thorough investigation of former Director Sessions, which resulted in his removal from office. The FBI's OPR has proven its independence, and I am confident the office would be loyal to the mission of the IG. Additionally, using FBI personnel, who are already in place, is a more cost effective approach. This is especially significant when compared to increasing the 42 million dollar budget of the OIG/DOJ office for additional investigators, training, and staff to handle the increased work load.

The FBI IG approach also preserves an increased element of independence for the FBI over the OIG/DOJ concept, while still establishing appropriate oversight by Congress. Increased control by the OIG/DOJ could erode that independence in the future. I want to emphasize that it is absolutely necessary to protect the Bureau's investigative independence so that its ability to investigate wrongdoing within the Federal Government is not impaired. An apolitical FBI is a must. Some of the worst sins committed by senior FBI management were those acts that created the impression that the FBI was politicized, such as the Filegate matter.

The problems with expanded control by the OIG/DOJ are considerable. If the FBI is no longer responsible for investigating internal wrongdoing, the FBI's ability to maintain strong command over its operations and employees is weakened. The organization itself is undermined. The FBI, every law enforcement agency, should be forced to conduct its own internal affairs investigations in an honest and straightforward manner. Additionally, the OIG/DOJ personnel would always be considered

outsiders who would never gain the FBI employees' confidence and cooperation, which are necessary for successful internal affairs investigations. Non-FBI investigators would be hampered in their investigative efforts by not knowing the culture, mores, relationships, and subtle nuances of the FBI environment.

I am hopeful Attorney General Ashcroft will reconsider giving OIG/DOJ the authority to handle the FBI's internal affairs and support an FBI IG.

I would be pleased to answer any questions.

Chairman LEAHY. Mr. Perry, would you go ahead, please?

STATEMENT OF FRANK L. PERRY, SUPERVISORY SENIOR RESIDENT AGENT, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Mr. PERRY. Mr. Chairman, you have my statement and I will be brief and not read it all.

In response to your invitation to appear before the Committee today, I offer a brief summary of my experience and what I intend to be and hope are constructive recommendations for the future of the FBI. These are offered with a sense both of humility and gratitude for an organization that now needs to examine itself honestly and with a sense of calling to better protect human rights and promote the national security.

I joined the FBI as an agent in 1982 and have served in various divisions, to include Internal Affairs and as the head of the Office of Law Enforcement Ethics. I have listed in my statement various other assignments, but I will skip those.

With regard to the purpose of this hearing, I respectfully submit that I investigated hundreds of OPR matters and was exposed to about 2,500 such cases over a 5-year period.

In 1992, several of us in OPR began to see a change in the nature of FBI misconduct. While still a very small percentage of the agent population, approximately 1 to 2 percent were involved in substantiated allegations of serious and criminal misconduct. These substantiated allegations were becoming of a more premeditated nature, as opposed to misconduct resulting from poor judgment.

The good news, subsequent to a 6-month, honest look at ourselves was that we saw no trends of special agents engaging in civil rights abuses, brutality, drugs, and classic quid pro quo corruption. We were seeing trends in certain categories that prompted OPR, comprised totally of FBI agents and with no prompting from the Department of Justice, to research and recommend to the Director a comprehensive, proactive ethics initiative designed to prevent misconduct as opposed to merely reacting to it. Any such training and culture-changing initiative could not be muzzled or constrained or covered up in any fashion. Mr. Freeh agreed, and the program was begun in 1996.

As head of that office, I wanted to look at ways that policies, programs and training would be meaningful and neither politically expedient nor mere window dressing. I believe the internal affairs and training components of the FBI were beginning to feel better about the course of the FBI due to this collaborative effort.

During this time, I was asked to investigate the FBI's investigation of the Ruby Ridge standoff, and after dozens of interviews and document reviews drafted the results, with the oversight of the Justice Department's OPR and Justice Management Division. And I encountered overwhelming candor and forthrightness from FBI

agents, but, sadly, I also encountered resistance on the part of some senior FBI executives regarding results that were nothing less than objective and balanced, but often organizationally unflattering, which were reached based upon a preponderance of testimony and evidence.

I do not believe there was a conspiracy or systematic plan to obstruct or cover up. I do believe, because of this case and so many others to which I was exposed, that the culture of the FBI is such that, as Mr. Grassley indicated, some senior executives have been motivated by a desire not to embarrass the Bureau, as opposed to honoring the mission and purpose of the FBI—investigate, seek, find, speak and apply the truth.

In my judgment, this tendency does not constitute corruption. It constitutes a “made member” or “club” mentality, as Mr. Werner indicated, that has led to the perception that the organization is oftentimes less than forthcoming, and circles the wagons rather than squares off and confronts what are often tragic mistakes as opposed to ethical wrongdoing.

This culture can be changed without disparaging any individuals. Senior managers often are rated on issues that amount to form over substance or image over crime control. I would therefore suggest that the inspection process, similar to the OPR process, entail the use of signed, sworn statements to assess a senior manager’s performance and the corresponding client surveys, as opposed to what is still perceived as a “blue skies” or “contract” approach.

I would argue that the measures of managerial performance known as “effectiveness” and “efficiency” be coupled with the ethical aspect of management in assessing leadership competence and advancement. For example, a manager’s candid assessment and attack of a crime problem is more important to the taxpayer than emphasis on image, accommodation, or avoidance of violating a compliance issue; that is, making a mistake.

As William James put it, there are worse things than being wrong, and Mr. Danforth put the same point before this Committee as “. . . making mistakes is not as bad as hiding mistakes.” I would add that this self-inspection or performance process—and this is the first of my two points—continue to be conducted by selected special agents, with Department of Justice oversight, assessment and co-inspector status, the latter of which is not in place now, but would add to the credibility of the senior management promotion process.

The FBI’s internal affairs, or OPR, process historically has been, in my judgment, a firm and fair process below the senior executive level. This view prompted me to ask Mr. Kiernan to research whether the FBI had a double standard of discipline, as perceived by many—and you have that report, I believe—such that senior executives were not held to a higher standard of professional responsibility and accountability pursuant to substantiated allegations of misconduct.

A 10-month study, which was scrutinized in detail by Mr. Freeh and his direct subordinates, showed a double standard, or certainly what was perceived to be one by the ran-and-file. As a result, Mr. Freeh formally changed the form and content of senior executive

discipline and accountability in August of 2000, as you, Mr. Leahy, alluded to at the beginning of this session.

This was a step in the right direction, but I am not convinced that this policy changed the culture problem we are here to address. This tendency by some to allow, if not promote, the culture of reluctance to recognize sincere, objective and unselfish attempts to better the organization must be addressed and monitored by the next Director.

I believe Mr. Freeh tried, and succeeded to some measure. He commented to me once, out of frustration, that some senior executives complained to him that he was over-emphasizing "this integrity thing." This type of comment does not represent the majority opinion of senior managers. It is symptomatic of the culture that, while emphatically not corrupt, is complacent, if not resistant to ethical oversight.

So my last point: Internal discipline should be investigated by FBI agents, with the oversight of an artful and vigilant, though not zealot, OPR entity of the Department of Justice or the OIG. "Physician, heal thyself" is not an inappropriate analogy in this context. I see no need for a separate OIG, though I am aware that this is the minority opinion on that point.

Special agents respond better to special agents and are more forthcoming, and fear peer review more than review by an outside agency. It is my understanding that in the military court martial setting, many defendants prefer facing an independent magistrate rather than a jury of their peers.

This culture is not to be construed as part of the cover-up or "circle the wagons" culture. This tenet of internal discipline comes from professional pride, not arrogance, in that with the FBI's expanding jurisdiction, which includes investigation of so many other Government agencies, it is a contribution to esprit de corps to know that Congress and the White House allow us to investigate ourselves using, with oversight, a higher standard of honesty and fairness. Such moral freedom, as it were, may sound high-minded, but I have seen this process, with the appropriate leadership and Department of Justice oversight, work amazingly well, firmly, fairly, and without zealotry or political influence.

The Criminal Division of the Department of Justice, not OPR, had oversight of the original Ruby Ridge matter, and the Justice Management Division of the Department adjudicated the last of the administrative inquiries. Even so, it is FBI agents that you have called before you today, who are responding to your request to truthfully attest to internal problems, and I believe that to be significant.

In closing, distinguished members, my experience, my research and my conscience lead me to believe that we have a healthy baby and need not throw it out with the bath water we are examining. The FBI does need to come to recognize, as the ancient Greek thinkers knew, that a preoccupation with being "the best" can indeed be an enemy of the good.

I have spoken to these issues in an article published in February of this year by the FBI's own Law Enforcement Bulletin, copies of which I believe you have requested and have been provided, so I will not go into these recommendations here.

We do expect of our leadership and all of our managers and agents and professional support the realization in all of our policies of hiring, promotion and crime-fighting that a morally good FBI is the best FBI, and that the way to maintain the good we have done, but become better all the while, is to put justice, fairness and the truth over considerations of image, career and accommodation. We know what to do. We require the collective will, culture and leadership to consistently do it.

[The prepared statement of Mr. Perry follows:]

STATEMENT OF FRANK L. PERRY, SUPERVISORY SENIOR RESIDENT AGENT, FEDERAL BUREAU OF INVESTIGATION, RALEIGH, NORTH CAROLINA

Mr. Chairman and Distinguished Members of the Committee:

In response to your invitation to appear before the Committee today, I offer a brief summary of my background and FBI experience, and what I intend to be and hope are constructive recommendations for the future of the FBI. These are offered with a sense of both humility and gratitude for an organization that now needs to examine itself honestly and with a sense of calling to better protect human rights and promote the national security.

I joined the FBI as a Special Agent in 1982, and have served in the Charlotte and Tampa Divisions, Washington Field Office, and FBI Headquarters, working organized crime, narcotics, domestic and international terrorism, and counterintelligence. After a three year tour of duty as an undercover agent for the National Security Division, I was selected as a supervisor for the FBI's Internal Affairs Division (Office of Professional Responsibility (OPR)), where I served for five years. In 1996, I was appointed by the Director as head of the Office of Law Enforcement Ethics at the FBI Academy, Quantico, Virginia. I am currently the Supervisory Senior Resident Agent of the Raleigh Office, which reports to the Charlotte Division.

With regard to the purpose of this hearing, I respectfully submit that I investigated hundreds of OPR (Internal Affairs) matters and was exposed to about 2,500 such cases over a five year period. In 1992, several of us in OPR began to see a change in the nature of FBI misconduct. While still a very small percentage of the Agent population was involved with substantiated allegations of serious and criminal misconduct (one to two percent of the entire Special Agent and management population), the substantiated allegations were becoming of a more premeditated nature, as opposed to misconduct resulting from poor judgment. The good news subsequent to a six month honest look at ourselves was that we saw no trends of Special Agents engaging in civil rights abuses, brutality, drugs, and classic or quid pro quo corruption. We were seeing trends in certain categories that prompted OPR, comprised totally of FBI SAs, and with no OPR/DOJ prompting, to research and recommend to the Director a comprehensive proactive ethics initiative designed to prevent misconduct as opposed to merely reacting to it when it occurred. Any such training and culture-changing initiative could not be muzzled or constrained or covered up. Mr. FREEH agreed, and the program was begun in 1996.

As head of that office, I wanted to look at ways policies, programs and training would be meaningful and neither politically expedient nor mere window dressing. As a result, we drafted a curriculum that attempted to understand the moral foundation of the Constitution to which we gave an oath to defend. We wanted our recruits to come to see their work as a calling to defend human rights, which often involved the paradoxes of undercover work and other law enforcement-specific moral dilemmas, emphasizing that justice means nothing without the complete truth eventually coming out in the discovery and courtroom setting. Such understanding and practice prevents corruption, while maintaining the highest performance and prosecutorial standards. I believe the Internal Affairs and Training components of the FBI were beginning to feel better about the course and future of the FBI.

During this time, I was asked to investigate the FBI's investigation of the RUBY RIDGE standoff, and after dozens of interviews and document reviews, drafted the results with the oversight of the Justice Department's OPR and Justice Management Division (JMD). I encountered overwhelming candor and forthrightness from FBI Agents, but sadly I also encountered resistance on the part of some senior FBI executives regarding results that were nothing less than objective and balanced, but often organizationally unflattering, which were reached based upon a preponderance of testimony and evidence. I do not believe there was a conspiracy or systematic plan to obstruct or cover up results. I do believe, because of this case and so many others to which I was exposed while in OPR, that the culture of the FBI is such

that, as one of the members of this Committee has put it, some senior executives have been motivated by a desire not to embarrass the Bureau, as opposed to honoring the mission and purpose of the FBI: investigate, seek, find, speak, and apply the truth. In my judgment, this tendency does not constitute corruption. It constitutes a “made member” or “club” mentality that has led to the perception that the organization is oftentimes less than forthcoming, and circles the wagons rather than squaring off and confronting what are often tragic mistakes as opposed to ethical wrongdoing.

This culture can be changed without disparaging any individuals. Firstly, an organizational obsession with compliance issues at the expense of fundamental case-making as a result of aggressive, honest, investigative effort, must be changed. Senior managers often are rated on issues that amount to form over substance or image over crime-control. I would therefore suggest that the inspection process, similar to the Internal Affairs process, entail the use of signed sworn statements to assess a senior manager’s performance and the corresponding climate surveys, as opposed to what is still perceived as a “blue skies” or “contract” approach. I would argue that the measures of managerial performance known as “effectiveness” and “efficiency” be coupled with the ethical aspect of management in assessing leadership competence and advancement. For example, a manager’s candid assessment and attack of a crime problem is more important to the taxpayer than emphasis on image, accommodation or avoidance of violating a compliance issue (i.e. making a mistake). As William James put it, there are worse things than being wrong (Mr. Danforth put the same point before this Committee as “. . . making mistakes is not as bad as hiding mistakes.”). I would add that this self-inspection or performance process continue to be conducted by selected Special Agents, with DOJ oversight, assessment, and co-inspector status, the latter of which does not currently obtain, but would add to the credibility of the senior management promotion process.

The FBI’s Internal Affairs historically has been, in my judgment, a firm and fair process, below the Senior Executive (SES) level. This view prompted me to ask Mr. KIERNAN to research whether the FBI had a double standard of discipline as perceived by many, such that senior executives were not held to a higher standard of professional responsibility and accountability pursuant to substantiated allegations of misconduct. A ten month study which was scrutinized in detail by Mr. FREEH and his direct subordinates showed such a double standard existed, or certainly was perceived to be so, and as a result, Mr. FREEH formally changed the form and content of senior executive discipline and accountability in August of 2000. This was a step in the right direction, but I am not convinced that this policy changed the “culture” problem we are here to address.

This tendency by some to allow if not promote the culture of reluctance to recognize sincere, objective, and unselfish attempts to better the organization must be addressed and monitored by the next Director. I believe Mr. FREEH tried, and succeeded to some measure. He commented to me once out of frustration that some senior executives complained to him that he was over emphasizing “this integrity thing.” This type of comment does not represent the majority opinion of senior managers. It is symptomatic of the culture that, while emphatically not corrupt, is complacent if not resistant to ethical oversight.

So, my last point: internal discipline should be investigated by FBI Agents, with the oversight of an artful and vigilant though not zealot, DOJ entity, be it OPR or the OIG. “Physician, heal thyself” is not an inappropriate analogy in this context. I see no need for a separate OIG, though I am aware this is the minority opinion on that point. Special Agents respond better to Special Agents and are more forthcoming and fear peer review more than review by an outside agency. It is my understanding that in the military court martial setting, many defendants prefer facing an independent magistrate rather than a jury of their peers. This culture is not to be construed as part of the cover up or “circle the wagons” culture. This tenet of internal discipline comes from professional pride—not arrogance—in that with the FBI’s expanding jurisdiction which includes the investigation of so many other government agencies, it is a contribution to esprit de corps to know that Congress and the White House allow us to investigate ourselves using, with oversight, a higher standard of honesty and fairness. Such “moral freedom” as it were may sound high-minded, but I have seen this process, with the appropriate leadership and DOJ oversight, work amazingly well: fairly, firmly, and without zealotry or political influence. The Criminal Division of DOJ, not OPR, had oversight of the original Ruby Ridge matter, and the Justice Management Division of DOJ adjudicated the last of the administrative inquiries. Even so, it is FBI agents that you have called before you today, who are responding to your request to truthfully attest to internal problems, and I believe that to be significant.

Distinguished members, my experience, my research, my conscience lead me to believe that we have a "healthy baby" and need not throw it out with the bath water we are examining. That baby, the FBI, does need to come to recognize, as the ancient Greek thinkers knew, that a preoccupation with being "the best" can be an enemy of "the good". I have spoken to these issues in an article published in February of this year by the FBI's own Law Enforcement Bulletin, copies of which I believe you requested and have been provided, so I will not detail these recommendations here. We do expect of our leadership, mid-level managers, special agents, and professional support, the realization in all our policies of hiring, promotion, and crime fighting that a morally good FBI is the best FBI, and that the way to maintain the good we have done but become better all the while is to put justice, fairness, and the truth over considerations of image, career, and accommodation. In fact, the best image for an organization is derived from its efficacy, and that in turn from its professional ethics. We know what to do; we require the collective will, culture, and leadership to consistently do it.

Chairman LEAHY. Thank you.

Before we go to Mr. Kiernan, I understand each of you have family members here today. Is that correct?

Mr. ROBERTS. I have, sir.

Chairman LEAHY. Mr. Roberts, who is here?

Mr. ROBERTS. My wife, Brenda Roberts.

Chairman LEAHY. I am glad to have you here.

Mr. Kiernan, you get to be the wrap-up.

**STATEMENT OF PATRICK J. KIERNAN, SUPERVISORY SENIOR
RESIDENT AGENT, FEDERAL BUREAU OF INVESTIGATION,
WASHINGTON, D.C.**

Mr. KIERNAN. Thank you, Mr. Chairman. By way of background, I am currently a supervisory special agent in the Law Enforcement Ethics Unit at Quantico, Virginia. I have approximately 15 years in the FBI, the last 3 in that position. Within that 3-year time period, I spent approximately 14 months working with the Office of Special Counsel under Senator John Danforth. I am extremely proud of my 15 years of service to the FBI.

The Law Enforcement Ethics Unit was established in 1996, as Mr. Perry stated. In that Unit, I spend the majority of my time instructing new agents, current agents, FBI support personnel, as well as police officers from all over the country when we do some travel, and around the world. The FBI is often looked to to either initiate or improve law enforcement ethics programs in these countries.

However, because the FBI is made up of humans, we too have sometimes fallen short of the excellence expected by the American public. No one among us is perfect, and I certainly include myself in that, and we each have to struggle with our own individual foibles.

One of the additional roles of the Law Enforcement Ethics Unit is to periodically review the practices, policies and guidelines of the FBI to ensure the FBI is being fair both to its own employees and to the American public.

Should we discover a problem, it is our responsibility and obligation to point it out and correct it. It is my belief that if the Ethics Unit of the FBI cannot speak the truth concerning a particular matter and attempt to implement needed change, what other unit in the FBI would be willing to do that?

In that regard, I came to work on what is now has been called the SES Report, or the Senior Executive Service Accountability Re-

port. In that report, there was a perception among the agent and support population that there was a perceived disparate treatment between the discipline given the rank-and-file employee and the Senior Executive Service management.

Over a 10-month period, I examined cases, I pulled cases. I looked at statistics, I interviewed knowledgeable personnel within the FBI's OPR that were aware of specific interviews, and concluded with a 26-page report that was presented to Director Freeh on September 1, 1999.

In that report, to the opinion of our unit, the perception was more than just a perception; it was a reality. We were able to cite specific cases that, in our mind, did show the disparate treatment between senior managers and rank-and-file employees. Some of these cases also showed the great lengths that senior managers went to in order to mitigate or downgrade the alleged misconduct of some of their fellow colleagues.

To Director Freeh's credit, he corrected this inconsistency, and in August of 2000 he changed it, so he disbanded the Senior Management Board that was reviewing these cases and created a single disciplinary system for all FBI employees.

Shortly after this, I was asked to take on the assignment as the sole liaison for the FBI with the Office of Special Counsel. Mr. Roberts had initially called me and asked me to take on this role, despite the fact that he had declined it based on his previous problems with Ruby Ridge. I was aware of that, but felt that this was an important assignment and one that needed to be resolved as quickly as possible so that the American people would know once and for all what had happened at Waco.

During the course of my assignment with the Office of Special Counsel, I was initially assigned to work with the Office of General Counsel. I believe there was a resistance there that they still wanted to control the flow of information. There were certain managers there that I felt were taking a legalistic approach to the special counsel's investigation and only wanted to provide what was legally required, as opposed to all the documents which the Office of Special Counsel had initially requested.

I believe the OSC agreed with me on this philosophy and, in fact, subsequently sent approximately 15 investigators over to the FBI one morning shortly after my assignment began to search several offices of the Office of General Counsel.

While performing this role, I was guided by one overriding philosophy, and that was to provide absolutely everything that had to do with Waco to the Office of Special Counsel so they could make an informed and independent decision on the Government's action during that incident. The FBI was not to make relevancy cuts and not to decide what was important and what was not.

As a result of taking this what consider "open the books" stance, there were occasional disagreements with certain senior managers, not only in the Office of General Counsel, but other divisions. People were told not to disclose problematic issues with me because it would get back to the OSC. I was excluded from certain meetings that had to do with responding to OSC requests. Official letters were sent out without my review because I believe certain managers thought I would object to the wording. I was referred to as

too controversial and, in short, seen as disloyal for trying to cooperate with the Office of Special Counsel.

As I was concluding my assignment and looking for other career opportunities, it was pointed out that it might be best for me to just return to Quantico and chill out for a while. As a result of—

Chairman LEAHY. I just want to make sure we understand for the record. The Office of Special Counsel, Senator Danforth, was there under the direct request and on behalf of the Attorney General of the United States, who, after all, is over the FBI. Is that correct?

Mr. KIERNAN. That is correct, and in any statement that I had seen from Director Freeh he always wanted the FBI's full and complete cooperation with the OSC and that is what I was going on.

As a result of my time with the Office of Special Counsel, several potential incidents of misconduct came to my attention. I forwarded these incidents to the FBI's Office of Professional Responsibility at the conclusion of my assignment. Three of those incidents dealt with senior managers. Two of them dealt with what I considered specifically retaliatory action against me, and I am content to allow that process to proceed to its conclusion.

I see my time is up.

Chairman LEAHY. Go ahead. I will waive some of my time for questions. I want you to continue with what happened because Senator Danforth's efforts in getting the facts from Waco and your involvement with that is integral to this whole hearing that we are doing. So I want to hear the rest of that.

Go ahead.

Mr. KIERNAN. I believe that some of this criticism we all hear about in the daily news of the FBI is well deserved. It is not easy and very frustrating to represent the Ethics Unit of the FBI, where our goal is to teach the avoidance of many of these issues, and yet be constantly faced with these when I go out to instruct either agents or law enforcement officers from around the country or around the world. It is not easy to battle people in your own organization when you are just trying to do the right thing. In an ideal world, the Ethics Unit of the FBI would never be in conflict with the senior management of the FBI.

Concerning some suggested improvements, I really strongly believe that the ethical message that was started by Director Freeh to the new agents of the FBI never quite made it down to some of the senior managers of the FBI, and that is where it really needs to take strong hold and be pulled together. Unfortunately, career advancement at any cost sometimes becomes the ultimate goal, and decisions are made for selfish interest as opposed to the good of the country or the organization.

I would also suggest that the Committee possibly consider establishing an ethics czar or a senior-level FBI official that is solely concerned with the ethical implications and perspective of either a high-level policy decision or operational decision. There are legal people in place to do that, administrative procedural people. But if you had one person that could just sit back and ask the question, is this really the right course of action for the FBI to take, that might go a long way toward resolving many of these problems.

Finally, the ethical message itself must be backed up by action. Simply having a lot of rhetoric will do no good if the disciplinary system itself is not backed up, including demotions and dismissals, if that needs to be the case. Attempting to cover up investigative miscues from the American public or protect your colleagues from career embarrassment, no matter how noble the intentions, should be the quickest way to get fired from the FBI.

In conclusion, I wanted to comment that during a recent visit to the United States Naval Academy with my family I came across the Latin phrase "non sibi, sed patriae," which means "not for self, but for country." That is the tone that needs to be set at the FBI. Each person here today before your Committee has attempted to do that in the FBI. Countless other FBI employees do it everyday and live out that philosophy, with some having paid the ultimate sacrifice. It is for those heroes and others to come that we here could not simply sit idle and allow these problems to continue. We all care too much about this organization.

Hopefully, with your Committee's oversight, a new administration and a new Director, the FBI can begin its journey back to becoming the premier law enforcement agency in the world, one of which the American people can be proud.

Thank you, Mr. Chairman. I am available for questions.

[The prepared statement of Mr. Kiernan follows:]

STATEMENT OF PATRICK J. KIERNAN, SUPERVISORY SPECIAL AGENT, FEDERAL
BUREAU OF INVESTIGATION

Mr. Chairman, Senator Hatch, and members of the Judiciary Committee.

BACKGROUND

I am currently a Supervisory Special Agent of the FBI who works full-time in the Law Enforcement Ethics Unit (LEEU), based at the FBI Academy, Quantico, VA. I arrived in this Unit in June 1998 and left for approximately 14 months between November 1999 and January 2001 to work at FBI Headquarters as the fulltime liaison to the Office of Special Counsel's (OSC) Waco investigation, led by former Senator John C. Danforth. Prior to my time in LEEU, I spent 11 ½ years as a Special Agent assigned to the Dallas Division of the FBI working a variety of criminal and intelligence assignments. Before joining the FBI, I worked for two years as an attorney in a small private firm in northern New Jersey. I am extremely proud of my nearly 15 years of service to the FBI, especially the last three.

LAW ENFORCEMENT ETHICS UNIT

The LEEU was established in 1996 by Director Louis J. Freeh and originally placed under the supervision of Unit Chief (UC) Frank L. Perry. Overall supervision of the Unit falls under the FBI Office of Professional Responsibility (OPR). At the Unit, I instruct New Agents, current Agents, and FBI support personnel in the importance of always maintaining high standards, and in never forgetting to place ethics and integrity at the center of their professional lives. I also have instructed and met with law enforcement officers from all over the United States, as well as from foreign countries, including Bulgaria, Hungary, Macedonia, Montenegro, Albania, Latvia, Egypt, Saudi Arabia, England, and Ireland. These countries look to the FBI to be the role model to either initiate or improve their law enforcement integrity programs. The FBI is often the standard by which others are measured. However, because the FBI is made up of humans, we too, have sometimes fallen short of the excellence which is expected and deserved by the American public. No one among us is perfect. We each have to struggle with our own individual foibles.

One of the additional roles of the LEEU, when not instructing, is to periodically review FBI policies, procedures, and guidelines to ensure that the FBI is being fair to its own employees and to the American people. Should we discover a problem, it is our responsibility and obligation to point it out and correct it. It is not a role that we take lightly, particularly since many times, it may involve taking on a long-

established FBI policy or procedure, which others may have declined to try to change for fear of negative career consequences or retaliation. However, my belief is that if the Ethics Unit could not speak the truth concerning a particular matter and attempt to implement needed change, what other Unit in the FBI would be willing to do it? It is this reasoning that has brought me to your hearing today.

SENIOR EXECUTIVE SERVICE ACCOUNTABILITY REPORT

During 1999, I was the primary author behind a report entitled "FBI SENIOR EXECUTIVE SERVICE ACCOUNTABILITY: A HIGHER STANDARD OR A DOUBLE STANDARD?" The Ethics Unit had heard on numerous occasions of a perceived double standard in the administration of discipline between FBI senior managers and rank and file employees. This was an issue that needed to be reviewed and challenged if true. Over a ten month period, cases were reexamined, statistics analyzed, and interviews conducted with knowledgeable personnel from the FBI OPR. The final report was handed to Director Freeh on September 1, 1999 by UC Perry.

The findings from the report revealed that disparate treatment did exist between senior managers and the rank and file FBI employees. Instead of senior managers receiving greater discipline for an infraction, as one might expect because of their greater responsibilities, they oftentimes received less or even none. Specific cases were cited to illustrate the great lengths fellow senior managers went through to mitigate or downgrade the alleged misconduct. A recommendation was made to disband the special senior manager board, which reviewed all senior manager cases for discipline. To Director Freeh's credit, he corrected this inconsistency. In August 2000, he disbanded the senior manager board and created a single disciplinary system by which all FBI employees would have their cases adjudicated.

OFFICE OF SPECIAL COUNSEL LIAISON ASSIGNMENT

In November 1999, I was asked by Senator Danforth to become his sole liaison to the OSC investigation. He was initially experiencing some problems in obtaining the FBI's full cooperation. In the Ethics Unit, we realized the last thing the FBI should be doing was to hinder or obstruct an outside investigation where the Bureau was accused of covering up the facts. Every statement I read from the Director was that the FBI was pledging its "full and complete cooperation" toward the OSC. Anything short of that would only make the OSC and the American public more suspicious of the FBI. This lack of cooperation was not the posture to be taking while attempting to gain back the public's trust. Without that trust, the FBI will never be able to accomplish its law enforcement mission.

As you may be aware, UC John E. Roberts, FBI OPR, declined this same liaison role because of how he had been treated after leading an outside criminal investigation against several of his colleagues within the FBI. UC Roberts believed his association with the earlier Ruby Ridge investigation had not made him any new friends in the FBI, and in fact had harmed his future career opportunities because of the findings and some of the confrontational interviews he needed to conduct. UC Roberts made me aware of his previous problems before I accepted the OSC assignment. At the time, I believed that the public did not fully understand everything that had happened at Waco and I wanted to be involved in a short-term high profile investigation which hopefully would clear it up once and for all.

INTERACTION WITHIN THE FBI

My assignment as the new liaison to Senator Danforth seemed to meet with immediate resistance from the FBI's Office of General Counsel (OGC), who I believe still wanted to maintain control of the flow of information. When it was pointed out to Director Freeh that there was a conflict of interest with assigning me to the OGC, as some of their own personnel and practices were under investigation, he changed my reporting to the FBI's Inspection Division. Although I was placed in a different Division, the OGC was still coordinating the retrieval and release of FBI documents to the OSC. Accordingly, I continued to have almost daily contact with the OGC. Initially, certain managers took the position that they were only going to provide what was legally required, as opposed to disclosing all Waco documents, which the OSC had requested. This stance was similar to an adversarial legal proceeding. This attitude was unacceptable to the OSC and they signaled this displeasure to the FBI by "visiting" on the morning on December 16, 1999 with approximately 15 investigators to search several offices of the OGC. Ultimately, although the process was definitely rocky, I do believe the OSC received full disclosure of any documentary evi-

dence the FBI had in its possession and their conclusions regarding the events at Waco were correct.

While performing my role as OSC liaison, I was guided by one overriding philosophy. The OSC was to be provided with absolutely everything that had to do with WACO so they could make an independent and informed decision about the government's actions during that stand-off. The FBI was not to make decisions regarding the "relevancy" of the information. That was for the OSC to decide. That is how I understood the phrase "full and complete cooperation." I was trying to resolve issues with an eye toward the long-term best interests of the FBI and the nation, not a short-term expedient "quick fix." Unfortunately, not everyone I dealt with at the FBI had this same mindset.

As a result of taking this "open the books" stance, there were occasional disagreements with some senior managers from the various FBI Divisions. As a mid-level manager, I believe many in senior management were insulted that I was coming into their Divisions and requiring nothing short of total cooperation with the OSC. While some resented me for it, I believe many other dedicated Bureau employees realized this was the proper course of action, no matter how embarrassing the initial disclosures might be. Yet, people were told not to disclose to me problematic issues because the revelation would get back to the OSC. I was excluded from meetings which discussed responding to OSC requests. Official letters were sent out without my review because I believe certain managers felt I would object to the language or wording, if it was not completely honest and forthcoming. I was referred to as "too controversial" and in short, seen as disloyal to the FBI for attempting to cooperate with the OSC. This is further evidenced by the fact that when my OSC assignment was concluding and I was looking for other career opportunities at FBIHQ, it was brought to my attention that it might be best for me to "just return to Quantico for a while and chill out."

Through my assignment with the OSC, I was made aware of several instances of potential FBI misconduct, which occurred during the time period of the Waco stand-off up through the current OSC investigation. I initially attempted to have the OSC include these matters in their final report issued in November 2000. However, based on their well-defined written mandate from Attorney General Janet Reno, the OSC did not wish to include issues that were not central to their core investigation. This left me no choice but to report them to the FBI OPR in December 2000. Three of these referrals dealt with onboard senior managers of the FBI. Two of those three dealt specifically with what I perceived as retaliatory action toward me. I am content to allow the investigative process to proceed and only wanted those actions to be independently reviewed. I realize that retaliation can sometimes be very subtle and these cases are difficult to prove.

As difficult as it may be to hear the daily bad news about the FBI, in my heart, I know some of the criticism is deserved. It makes it even harder for me to face as I represent the Ethics Unit of the FBI, where our goal is to teach the avoidance of many of the same problems we are dealing with today. It is not easy and very frustrating to routinely battle the leaders of your own organization on issues of "doing the right thing." In an ideal world, the Ethics Unit of the FBI would never be in conflict with senior management.

SUGGESTED IMPROVEMENTS

Director Freeh made a great start in 1996 by significantly expanding the ethics program for the new Agents of the FBI. But the same message needs to be provided to the leadership of the organization. I do not believe that people intentionally want to make unethical decisions. However, everyone, myself included, needs the occasional reminder of why we joined the FBI. In almost all cases, it was to make a positive difference in the lives of American citizens. It was certainly not to make money. Nor should it have been to acquire power and influence. Unfortunately, sometimes career advancement at any cost becomes the ultimate goal and decisions are made for selfish interests, as opposed to the good of the organization or the country. This certainly is not unique to the FBI, but because of the FBI's considerable powers, it can have significant detrimental effects for the public.

I would suggest consideration be given to establishing an Ethics Czar at FBIHQ, who would have input into every high-level policy or operational decision. This input would be based solely on an ethical perspective. Not legal, administrative, or procedural, as there are already people in place to answer those issues. But simply to step back from all the other pressures of a high profile criminal investigative agency and ask "Is this the right thing for the FBI to do?" Consideration should also be given to creating a similar position in every field Division of the FBI. If the FBI is really serious about implementing its fifth core value, that being "uncompro-

missing personal and institutional integrity," then we need to do more than teach it to the new Agents and never talk about it again.

Finally, once the ethical message is out there, it must be backed up by action. Rhetoric alone will not suffice to truly change any ingrained cultural problems at the FBI. Those who fail to live up to the high standards expected of FBI employees must be disciplined appropriately, including demotions and dismissals. Only by sending a strong message, through both words and action that unethical behavior will not be tolerated, can we hope to prevent such misconduct. Attempting to cover-up investigative miscues from the American public or protect colleagues from career embarrassment, no matter how noble the intentions, should be the quickest way to get fired in the FBI. This is one of the classic law enforcement dilemmas my unit teaches the new Special Agents of the FBI, "Honesty versus Loyalty." Unfortunately, the loyalty in that equation is misplaced. Loyalty should be to the country and the United States Constitution, not to your colleagues and friends who helped promote you. I am not saying allegiance and fidelity to your associates is wrong. Camaraderie is very important, especially in a law enforcement agency where Agents on a routine basis risk their lives for each other. However, when the choice is between those two worthy moral goals, an FBI employee must choose "principles over persons."

CONCLUSION

During a recent visit with my family to the United States Naval Academy, we stopped in at the chapel. Over the entrance doors was a Latin phrase that I am sure every Naval Academy graduate knows, "Non Sibi, Sed Patriae" which means "Not for self, but for country." That phrase succinctly summarizes what needs to be done at the FBI. That is the tone which needs to be set. Each person here today before your Committee has attempted to do that in the FBI. Countless other FBI employees live out that philosophy every day, with some having paid the ultimate sacrifice. It is for those heroes and others to come, why we, before you today, could not simply sit idle and allow these problems to continue. We all care too much about this organization. Sometimes you have to endure short-term pain for long-term health and vitality. Hopefully, with your Committee's oversight, a new administration, and a new Director, the FBI can begin its journey back toward the goal of being the premier law enforcement agency in the world, one which the American people can be proud.

Chairman LEAHY. Thank you, Mr. Kiernan.

I am going to yield first to Senator Grassley, who, like other members of the Committee, has tried to juggle three other Committees today and who has spent so much time on this.

So I will yield first to you and then I will complete with my questions.

Senator GRASSLEY. Thank you, and I don't think that I will use the full time, Mr. Chairman.

First of all, I want to make clear not only to you, but to the other people at the FBI, and I want the public to also appreciate what whistleblowers go through. We appreciate, first of all, your testifying because I know those of who are still, and there are three of you still with the FBI, your speaking may subject you to retaliation.

I want to refer to 18 U.S.C. 1505, which carries a criminal sanction for interfering with a Committee investigation. Certainly, retaliation against a witness is interference, so if at any time you believe that you are retaliated against for providing information to Congress, I encourage you to contact any office, but I want to let you know that my office would be open to receiving your statements and to helping you.

In addition, I am going to be writing to the Attorney General today and the Acting Director of the FBI, reminding them of the protections that the law gives employees cooperating with a Committee investigating, including this Committee. I hope that other

members of the Committee would join in that effort as well. I know the Chairman has already spoken out, but I want to make sure that they know I feel the same way the Chairman does.

Chairman LEAHY. I think the message goes out that if you called either Senator Grassley or myself, you would get straight through to us.

Senator GRASSLEY. I am going to start with this question: It is my understanding that after the report prepared by the FBI Ethics Unit on the SES/rank-and-file double standard, former Director Freeh disbanded the SES Adjudication Board as a means to adjudicate senior official misconduct.

First, I would hope that that report, assuming it isn't too big, is made a part of the record.

Chairman LEAHY. It is already part of the record.

Senator GRASSLEY. OK, thank you.

Could any of you comment on the system that is now place to adjudicate the misconduct of senior officials, and what are the positives and negatives of the new system?

Mr. ROBERTS. The system now for SES and non-SES members of the FBI is one and the same; that is, it goes through the same disciplinary process. I don't have any information that any of those cases have been adjudicated to date fully. However, I think that it was a great move and I am encouraged that this will be at least part of the answer to having a fair system for both non-SES and SES employees.

Senator GRASSLEY. Does anybody else want to add anything?

Mr. PERRY. I might add, Mr. Grassley, that when we finished that report we felt it appropriate and prudent to hand it directly to Mr. Freeh. And Mr. Kiernan thought about how best to get it to him, but we felt that going through certain chains of command—and he was fully aware of what we were doing, as well as the fact that the head of our internal affairs OPR was fully aware that we were involved in this project, but was not fully aware of the “what’s” of the project.

Mr. Freeh reviewed it in detail. I think five assistant directors looked at it from the point of view of the inspection process, the legal process, as well as the SES process, and, as we indicated, approved it in August of 2000.

However, Mr. Kiernan and I did face comments to the effect that we were “lone rangers” and that the Ethics Unit should not engage in that sort of thing, although Mr. Freeh had approved it himself. So it is an added symptom of what we had to go through to have that particular report approved, and it is now in place.

Senator GRASSLEY. The second question: From your testimony, it looks like you are split on the question of who should perform the investigation of senior official misconduct within the FBI, the FBI OPR agents or an outside entity such as the Department of Justice IG.

At the same time, the kind of retaliation that has been experienced by all of you by conducting such investigations would lead one to conclude that a senior official investigation is not conducive to career enhancement. Don't you think this is bound to have a chilling effect, and wouldn't an outside entity be less liable to succumb to any fears of retaliation?

Mr. WERNER. The only thing that is clear to me through the years that I have worked in internal affairs is that FBI agents working under OPR, not outside of the OPR process, have always been able to do the proper thing.

I will point out Ruby Ridge. Both Mr. Roberts and I knew about relationships that existed between individuals involved in the original incident, we quickly were able to seize upon important witnesses and interview them to get important information that led to the unraveling of the mystery of what happened during that event. Had it not been for the fact that we had that prior knowledge of relationships, mores, nuances of management, I don't think we could have done that.

I think it is important that you have FBI personnel involved in the process, with some kind of oversight, whether it be an inspector general of the FBI, using FBI personnel, or oversight by this Committee over the OPR division of the FBI. But I think it is important for the organization to investigate their own, as Mr. Kelly suggested in earlier testimony before this Committee.

Senator GRASSLEY. That is the end of my questioning. I thank you very much for being kind to me to let me go first.

Chairman LEAHY. Do you have more? If you have another one, go ahead.

Senator GRASSLEY. To Mr. Perry, in your review of the Ruby Ridge investigation, you recommended disciplinary action be taken with respect to several senior FBI officials. Now, I know you can't provide any names and I don't expect you to, but could you please describe the reasons for your recommendations; that is, the type of misconduct that you found?

Mr. PERRY. We found that the initial investigation which we were investigating which was conducted by inspectors—that is not to disparage that process, but the original investigation was taken out of the hands of OPR, for a number of good reasons and some not very good reasons.

We were looking at that investigation because we saw a circle of conflict, as it were, friends investigating friends, people who had been promoted having been promoted by individuals that served on former SES career boards that they were now investigating and/or adjudicating. We felt that that entire process was flawed, and that therefore there was a misuse of position aspect of that, which is an OPR category of misconduct. We looked at that, as well as the adjudication process, as well as some actions on the part of others, as it was alleged that they tended to pull the investigation in certain directions, away from certain people.

We also looked at an aspect pursuant to the inquiry by Mr. Werner and Mr. Roberts that certain people had not been interviewed, that the original investigation was incomplete. In one case, we found over a dozen people who were not interviewed who could speak to, for example, the rules of engagement which led in many ways to the horrible tragedy.

So it was that sort of thing that we wrote up, and I think there was a preponderance of testimony and evidence that some actions should have been taken, both negative and positive, and no actions were taken, to my knowledge.

Senator GRASSLEY. Do you think these things are resolved or are there still some things from Ruby Ridge unresolved?

Mr. PERRY. I believe that a final product that is complete and objective, unbiased, has yet to be seen as far as from the point of view of adjudication. In fact, I am not aware of the Bureau ever releasing the adjudicative results of the investigation of the investigation.

Senator GRASSLEY. That is maybe something we would want to pursue.

Chairman LEAHY. I think eventually we are going to see it.

I spent an awful lot of time on Ruby Ridge. Senator Specter, Senator Kohl, myself and others were involved in that. Hindsight, of course, is always 20/20, but you didn't have to be too much of an expert to know, one, that there were a number of serious mistakes made, but, second, that worse than some of the mistakes made at Ruby Ridge were the efforts made to cover them up. Promotions were given to people who should have been severely censured, and other things went on that just made no sense.

In January of 2001, the Assistant Attorney General for Administration, Stephen Colgate, found that there was no misconduct on the part of FBI employees in the Ruby Ridge matter.

Mr. Roberts, you said that conclusion was "outrageous and alarming," I believe those were your words. So I would ask, based upon your knowledge of the facts and the precedent in disciplining FBI agents, and your own experience in reviewing the adjudication of the misconduct of FBI agents, do you believe that agents at the senior management level of the FBI should have been disciplined, without going into particular names?

Mr. ROBERTS. Yes, sir, I do. I also believe that the Ruby Ridge incident, from beginning to where we are now, is probably one of the best training documents that could exist on how not to do things; that is, how not to conduct internal investigations, how not to do shooting inquiries, how not to adjudicate a matter.

I do find it alarming, and I don't know how many have had an opportunity to read that report, but I would submit to you that to read that report and to see the preponderance of the evidence would lead most of us to conclude that there was some serious misconduct, or else we wouldn't be talking about this today.

It is alarming to me that no one was at fault for what occurred in the aftermath of the Ruby Ridge incident; that is, the investigations, those people that conducted the investigations, the flaws in the investigation, the lack of following logical leads, logical evidence in an investigation such as that.

And I might add, knowing that the Department of Justice and the FBI conducted the investigation jointly, I find it troubling that those in the FBI who were assisting in that investigation did not provide the proper guidance to the Department of Justice attorneys investigating that incident. I think it is a case of wanting to protect the organization, of wanting to protect perhaps people that you know or that you knew or that you had served with. I don't know where this will go. I don't know how it will end up in the future.

Chairman LEAHY. Well, how high up did that culpability go? I mean, if there were people who were not doing things right or were covering things up or were failing to follow obvious trails—and I can think of several instances that justify everything you have said

there from my own experience in that case, but how high up does that go?

Mr. ROBERTS. I think it goes to the highest levels of the FBI, sir, the highest levels.

Chairman LEAHY. I believe you are right.

Mr. ROBERTS. And that is not easy for me to say. I think you will find that all of us here—

Chairman LEAHY. It is not easy for me to say either, Mr. Roberts, because I am one who has been a very, very strong supporter of the FBI. My earlier career was in law enforcement. I have always felt that in many ways the most challenging and rewarding public career I have had has been in the area of law enforcement. But Ruby Ridge was a very, very disturbing thing, and the more you peeled the onion back, the more disturbing it became.

I am sorry. You were going to say something else. I didn't mean to interrupt.

Mr. ROBERTS. I just was going to say that all of us here thoroughly enjoy being employed by the FBI. We want nothing else but to be employed by the FBI, but we all four have concerns, and I think Ruby Ridge is just one of the best examples of how not to conduct business.

Chairman LEAHY. Well, let me just say on a personal note—and I may have other questions for the record, so we can wrap this up—you mentioned enjoying being with the FBI. And, Mr. Werner, even though you are retired, I could feel the affection and the pride, both of which are deserved, from your own experience.

You, Mr. Perry, and Mr. Kiernan, you are down there at Quantico and you see some of the smartest and most able men and women come into the training programs there, and if they make it through, you know they are good.

I remember in my days as a prosecutor when we would have police officers from our State of Vermont at either the local or State level who were going to go off to the FBI Academy to get further training, and many with my strong recommendation, how proud they were and how proud I was to have them back into a force that ultimately was responding to me and my office.

Even today, I have police officers from our State of Vermont, very good police officers, many I have known from the time they were first sworn in, who tell me they have an opportunity to go into the FBI and they will call me and ask for my advice. I know the pride they feel in going in there.

What we are trying to do is make sure that pride will always be justified, not just for the men and women who you have coming through, but those who are there today and for all of our sakes. This should be the example of the best of the world.

I don't want it to be a case where, Mr. Werner, the people hide mistakes, saying they are trying to protect the image of the FBI, because that doesn't protect them, as you pointed out, especially when it is done to protect each other. I don't want to see SES members on promotion boards making it very clear that if you blow the whistle or ask questions, you are going to face it when you reach the promotion board.

I want the best. I mean, no organization is perfect. I got elected to one that I respect greatly. I think of the U.S. Senate as being

the conscience of the Nation, but we can point to people in both parties who have not shown that conscience. We can point out mistakes.

I became the 21st person in our Nation's history to cast 10,000 votes. I can go back to those 10,000 votes and find some I wish I had done differently. But we do most of what we do out in the open and in the public, and if we make a mistake we usually have constituents who are going to tell us about it at the next election. And when that happens, we usually end up better. If mistakes have been made in Congress and if they have been made public, we usually get better for it, and the same with any law enforcement agency.

I admire what you do, Mr. Werner. I admire what you have done. I think you are in a proud organization, but I think with what you have done today in your testimony, you make it potentially a prouder organization and certainly a better one.

I thank you, and we will stand in recess.

[Whereupon, at 1:36 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

Questions from Senator Leahy and Senator McConnell for Senator Danforth

1. Senator Danforth testified about an FBI agent who reportedly did not want to act as the FBI liaison for the Waco investigation for fear that doing so would hurt his career, and a second agent, who did agree to act as liaison, who believed that he was retaliated against as a result.

a. Do you have an opinion of how significant a problem it is for FBI employees to be reluctant to report wrongdoing within the FBI because of the fear of retaliation?

b. Is there currently adequate protection for whistleblowers within the FBI?

c. What, if anything, would be an appropriate way to strengthen whistleblower protections for FBI agents?

2. Senator Danforth referred to the unwillingness of some in the FBI to acknowledge their mistakes because of an FBI "culture" that seeks to avoid public embarrassment. What should be done to change this unwillingness to admit mistakes?

3. Mr. Bromwich testified that the FBI has sometimes been resistant to obtaining guidance from groups or agencies outside of itself as shown, for example, in the problems with the FBI laboratory.

a. Do the other members of the panel agree that the FBI needs to be more open to outside influences?

b. If so, in what ways has such a lack of openness made the FBI less effective?

c. How could the FBI be made more open to outside influences?

4. One of the specific issues that this Committee may look at is how well the FBI works with its sister law enforcement agencies. The 1997 Inspector General's report on the Ames case concluded that the failure to detect Ames's espionage sooner was partly the result of lack of coordination between the FBI and the CIA. Recently, we have heard allegations that the FBI failed to provide evidence to the Alabama Attorney General that would have enabled him to prosecute two men in the Birmingham church bombing case in 1977. One of these men was convicted only this year and another apparently will not be prosecuted at all because of his mental condition. Do any of you have any view about how well the FBI works with other law enforcement agencies or what it might do to improve in this area?

5. Just three weeks ago, the Ninth Circuit Court of Appeals reversed a district court decision that FBI Special Agent Lon Horiuchi was immune from prosecution on State manslaughter charges arising from his role in the 1992 Ruby Ridge standoff. *Idaho v. Horiuchi*, 2001 WL 604255 (9th Cir. June 5, 2001) (en banc). Four former Attorneys General and a former FBI Director had filed an amicus brief argu-

ing that the decision eventually reached by the Ninth Circuit would “severely undermine, if not cripple, the ability of future Attorneys General to rely on specialized units in moments of crisis such as hostage taking and terrorist acts,” and that it was “impossible to imagine a more chilling circumstance” than the prosecution of Agent Horiuchi. Furthermore, the dissenting Ninth Circuit judges stated that the decision was a “grave disservice” to Federal agents, “who knew until now that if they performed their duties within the bounds of reason and without malice that they would be protected from state prosecution by Supremacy Clause immunity and not subjected to endless judicial second-guessing.” This leaves open a disturbing uncertainty concerning when Federal agents may be prosecuted by states for actions taken in the course of their official duties. This issue is obviously very important to the FBI and to Federal law enforcement generally. Do you believe that it is important for this Committee to consider legislation that would clarify this difficult area of immunity from State prosecution for actions taken as a Federal agent?

Question from Senator McConnell to Senator Danforth

Senator Danforth, you testified that the single best way to address many of the problems you encountered is to “change the culture” of the FBI. But changing the culture in any environment is usually a difficult task. How achievable is the goal of changing the culture of the FBI, and other than providing strong and persistent messages about the importance of honesty, cooperativeness, and accountability, what else can be done to achieve this goal?

Questions from Senator Leahy for Norman Rabkin

1. Senator Danforth testified about an FBI agent who reportedly did not want to act as the FBI liaison for the Waco investigation for fear that doing so would hurt his career, and a second agent, who did agree to act as liaison, who believed that he was retaliated against as a result.

- a. Do you have an opinion of how significant a problem it is for FBI employees to be reluctant to report wrongdoing within the FBI because of the fear of retaliation?
- b. Is there currently adequate protection for whistleblowers within the FBI?
- c. What, if anything, would be an appropriate way to strengthen whistleblower protections for FBI agents?

2. Senator Danforth referred to the unwillingness of some in the FBI to acknowledge their mistakes because of an FBI “culture” that seeks to avoid public embarrassment. What should be done to change this unwillingness to admit mistakes?

3. Mr. Bromwich testified that the FBI has sometimes been resistant to obtaining guidance from groups or agencies outside of itself as shown, for example, in the problems with the FBI laboratory.

- a. Do the other members of the panel agree that the FBI needs to be more open to outside influences?
- b. If so, in what ways has such a lack of openness made the FBI less effective?
- c. How could the FBI be made more open to outside influences?

4. One of the specific issues that this Committee may look at is how well the FBI works with its sister law enforcement agencies. The 1997 Inspector General’s report on the Ames case concluded that the failure to detect Ames’s espionage sooner was partly the result of lack of coordination between the FBI and the CIA. Recently, we have heard allegations that the FBI failed to provide evidence to the Alabama Attorney General that would have enabled him to prosecute two men in the Birmingham church bombing case in 1977. One of these men was convicted only this year and another apparently will not be prosecuted at all because of his mental condition. Do any of you have any view about how well the FBI works with other law enforcement agencies or what it might do to improve in this area?

5. Just three weeks ago, the Ninth Circuit Court of Appeals reversed a district court decision that FBI Special Agent Lon Horiuchi was immune from prosecution on State manslaughter charges arising from his role in the 1992 Ruby Ridge standoff. *Idaho v. Horiuchi*, 2001 WL 604255 (9th Cir. June 5, 2001) (en banc). Four former Attorneys General and a former FBI Director had filed an amicus brief arguing that the decision eventually reached by the Ninth Circuit would “severely undermine, if not cripple, the ability of future Attorneys General to rely on specialized units in moments of crisis such as hostage taking and terrorist acts,” and that it

was “impossible to imagine a more chilling circumstance” than the prosecution of Agent Horiuchi. Furthermore, the dissenting Ninth Circuit judges stated that the decision was a “grave disservice” to Federal agents, “who knew until now that if they performed their duties within the bounds of reason and without malice that they would be protected from state prosecution by Supremacy Clause immunity and not subjected to endless judicial second-guessing.” This leaves open a disturbing uncertainty concerning when Federal agents may be prosecuted by states for actions taken in the course of their official duties. This issue is obviously very important to the FBI and to Federal law enforcement generally. Do you believe that it is important for this Committee to consider legislation that would clarify this difficult area of immunity from State prosecution for actions taken as a Federal agent?

6. The work that GAO does for the Congress is very important in informing both Members and the public and providing sunshine on many government functions. For that reason, the Congress has provided broad authority for you to get the information you need to do your work. The details you provide in your testimony about the delays you face in your dealings with the FBI and how those delays have adversely affected your ability to do your work efficiently and provide timely information and advice to the Congress are important for us to hear.

a. How do you usually try to resolve your access problems at the FBI?

b. In your testimony you describe several situations in which you experienced significant delays in getting information from the FBI that you needed to perform an investigation. Have there been any circumstances in which the GAO has been unable to complete an investigation that Congress asked it to perform because the FBI failed to provide you with information you requested?

c. What impact has your experience with the FBI had on the kind and amount of oversight you give the agency?

d. What are some areas that the Committee should consider for future oversight of the FBI?

7. The GAO performs oversight investigations of many federal agencies in addition to the FBI. Could you describe how the FBI's record of cooperation with your oversight investigations compares with other agencies that are involved in law enforcement or counterintelligence?

Responses of John C. Danforth to questions submitted by Senators Leahy and McConnell

RESPONSES TO QUESTIONS FROM SENATOR LEAHY

Question 1a. As to the extent of the problem, my opinion is based on conversations with experienced federal prosecutors who worked with me in the Office of Special Counsel (OSC). I do believe the FBI has an unwritten policy of doing nothing to embarrass the FBI. The agency has a great deal of leverage over its agents and significant ability to punish “troublemakers,” with its power of promotions and job assignments. Therefore I believe that there is a real reluctance on the part of most FBI employees to report wrongdoing.

Question 1b. I am unaware of what procedures the FBI has to protect whistleblowers. The problem the OSC confronted was not really a whistleblower situation. Rather, we were dealing with employees who were concerned about the effect on their careers of simply doing their jobs by cooperating fully with ongoing investigations. The reality for an employee who loves his job is that there is no realistic protection from the isolation and rejection which can result from reporting wrongdoing within the organization or exposing it to criticism. This is only exaggerated in a law enforcement agency when an agent's life may depend on the support of fellow agents. There is no procedure which will protect an agent from such perceived consequences.

Question 1c. A system which guaranteed complete anonymity would be essential. This would probably require being able to report to someone outside the FBI. But the issue which I believe truly needs to be addressed is the agency's resistance to being open and candid when dealing with the public and other governmental organizations. It appears to be an attitude which permeates the agency and which creates problems for the agency more than a need to protect potential whistleblowers.

Question 2. The consistent message from the Department of Justice and the FBI should be that careers in the agency can survive mistakes, because everyone makes

mistakes, but careers cannot survive coverups. Candor must be the highest value at the FBI.

Question 3a. The FBI is one of the finest, if not the finest, law enforcement agency in the world. But every agency has room for improvement. Therefore, I fully agree that the FBI should be open to suggestions and ideas from outside agencies and groups.

Question 3b. As I think happened in the case of the Waco investigation, the FBI's sometimes perceived arrogance and lack of willingness to consider other agencies' input creates a lack of trust which makes it harder to accomplish its objectives when dealing with other agencies. I am also well aware that the FBI often is very successful at working with other agencies and utilizing resources and ideas of other agencies.

Question 3c. This is an attitude which must come from the top down. While the Attorney General can issue orders, the responsibility must fall to the Director of the FBI, whom all the agents view as their ultimate boss.

Question 4. There are many stories which could be told about how well the FBI has worked with other agencies and many stories of how the FBI did not work well with other agencies. The stories we heard from Waco indicated that the FBI did not get along well with other law enforcement agencies there to assist in the situation. However, situations as volatile as Waco cannot be handled by Committees. Decisions have to be made on a moment's notice. Decisions cannot be weighed down by concerns of making sure everyone feels included and has an equal say. The FBI rightfully demands full control of some of the matters it handles.

Conversely, the situations listed in your question relate more to the issue of sharing information. This problem again arises from the FBI not feeling the need to be open and candid with those outside the FBI. This is clearly an institutional problem which is created by an attitude of "we know what is best." Many federal agencies often feel in competition with each other—vying for recognition, vying for limited budgetary funds—which leads to the perception that the sharing of information could be threatening to said agencies. The sharing of law enforcement information is significantly important to successful control of criminal activity. A system encouraging all law enforcement to fully cooperate with each other is a more appropriate remedy than simply trying to zero in on the FBI.

Question 5. I have not studied the Ninth Circuit opinion. My initial opinion is that states should not prosecute federal officials for conduct pursuant to their offices.

RESPONSE TO A QUESTION FROM SENATOR MCCONNELL

Each federal law enforcement agency operates with certain goals. These goals are usually quantifiable into statistics kept by the agency and submitted to Congress each year. The statistics by which an agency is judged may need to be adjusted to encourage openness and cooperation. These same statistical evaluations are also made at the promotion level for agents. Success for interagency cooperation and proper disclosure of information should be rewarded.

One of the primary objectives of the FBI is to investigate and help prosecute criminals. The FBI generally believes that there is a separation of duties: they investigate, the prosecutors prosecute. However, many cases could be handled better and information more readily be shared if the FBI felt it had to answer to the prosecutor at each stage of the investigation. The prosecutor needs to foster openness and cooperation to be as successful as possible. Therefore, if he/she is in charge of investigations at an early stage, some of the problems which have been discussed might be avoided. The director of the FBI should require that agents work with assistant U.S. Attorneys on their cases as early as possible.

Leadership is key here. I believe the culture can be changed much more easily than some would think if it was the number one priority of the director.

One example points directly to the problem. More than eight months ago, the Office of Special Counsel referred an FBI attorney to the Office of Professional Responsibility for lying to federal investigators during the Waco investigation. No action has yet been taken to discipline the employee. To the contrary, I have been told she was given an award for her work on the Waco matter. The FBI should have a system in place to swiftly deal with employees who do not exercise total honesty, cooperation and accountability.

In this regard, I am aware of the difficulties today to terminate a federal employee's employment. Consideration should be given to eliminating some of the legal obstacles to firing dishonest FBI and Department of Justice employees. While we must be protective of an individual's legal rights, a law enforcement agency handling sensitive matters must have the ability to take swift action to uphold its standards.

Responses of Norman J. Rabkin to questions submitted by Senator Leahy

1. With respect to the adequacy of protections that are provided to FBI whistleblowers, we have not reviewed this issue and thus cannot address the question.

2. Concerning the question about what can be done to change a “culture” that is unwilling to admit mistakes, we believe that it is important particularly for public institutions, like the FBI, to recognize situations where performance has not met expectations. This is the first step in assessing the causes and the corrective actions needed to ensure, if possible, that future efforts meet expectations. It is also important for such institutions to differentiate between honest errors in judgement and ones resulting from inappropriate or negligent actions. Institutions need to be tolerant of the former and recognize that despite peoples’ best efforts unwanted outcomes may occur. Punishing individuals who make honest misjudgments could create an institutional environment plagued by decisional paralysis. Therefore, individuals need to know that as long as they act responsibly and within their authority, they will not be punished or become scapegoats if their decisions go awry. In this regard, FBI management needs to have controls and processes in place that are aimed at minimizing shortfalls in performance. When shortfalls occur, the Bureau should have processes and procedures for identifying them and addressing, through training and/or agency policy revisions, how best to ensure that they do not occur again. Finally, enhanced and continuous, constructive oversight of FBI programs and activities by independent organizations, like GAO and the Justice IG, could help change the FBI culture by identifying operational problems and deficiencies, as well as efficiencies, and working with the Bureau to bring about solutions.

3. With regard to your question about whether the FBI needs to be more open to outside influences, in several instances and in hindsight, it is clear that the FBI would be better served by being more open to outside influences. Certainly as pointed out by Mr. Bromwich in the Justice Office of Inspector General’s 1997 report on the FBI laboratory and in the FBI’s efforts to upgrade its technology, especially as such technology relates to FBI information systems, outside expertise could have been helpful. In some other areas, however, the FBI has sought outside assistance, most notably in investigative areas involving foreign counterintelligence, counterterrorism, and drug intelligence. The FBI’s increased participation in joint initiatives with other federal, state, and local law enforcement agencies could go a long way toward improving its openness to other viewpoints. Likewise, more openness to and cooperation with independent oversight initiatives and external reviews on a regular basis could make the FBI more open to outside influences and alternative approaches.

4. Regarding how well the FBI works with other law enforcement agencies, we are aware that over the last several years the FBI has increased its participation in joint task forces and has assigned some of its agents to work at other agencies as well as having other agencies’ personnel work at the FBI. We have not specifically reviewed the question of how well the FBI works and coordinates with other law enforcement agencies.

However, we know from ongoing work in the foreign counterintelligence area, for example, that at times there are legal concerns that can affect coordination efforts.

5. Concerning whether the Committee should consider the question of immunity for FBI agents from state prosecutions, clearly this is an issue that is important to law enforcement, including the FBI. However, it is not an issue that we have studied and, therefore, not one on which we can comment.

6a. Concerning how we try to resolve access problems at the FBI, our first step is to try to work through the FBI’s designated liaison to resolve problems. If those efforts are unsuccessful, we try to work through higher-level FBI officials in the Office of Public and Congressional Affairs. If those efforts are unsuccessful, we refer the matter to the FBI Deputy General Counsel for resolution. Should this effort also be unsuccessful, our next step, as noted in our testimony, is to have the Comptroller General, under GAO’s statutory authority, send the FBI Director a letter demanding access. The FBI Director would then have 20 days, by law, to respond to the letter. If access has still not been granted, the Comptroller General can bring suit in federal district court to compel access. As also stated in our testimony, in only one instance has the Comptroller General issued the FBI Director a demand letter and in that instance the FBI ultimately complied with our request. It is important to note that the biggest impediment we often face is not so much the FBI’s outright denial of requests for information and interviews as it is the delays in providing access to needed documents and pertinent officials and employees because of the Bureau’s bureaucratic process. These delays invariably lengthen the timeframes of our

FBI reviews, in comparison to reviews of other agencies, and make it very difficult to provide timely products to congressional clients.

6b. Regarding the question of whether there have been congressionally requested investigations that we have been unable to complete because the FBI failed to provide us information we requested, the answer is no. However, we would note the instance described in our testimony where in order to avoid delaying the issuance of our report, we dropped the FBI from a multi-agency review of federal teams that respond to chemical, biological, radiological, and nuclear terrorist incidents because the FBI refused to provide us requested information. There also have been instances where we have had to adjust our methodology or scope in conducting our work due to difficulties in obtaining timely access to needed information. For example, during our review of the FBI's costs associated with the Montana Freeman standoff, we lost an opportunity to do a partial check of the completeness of the FBI's reported cost estimates because the Bureau would not provide us access to the operational plan and report relating to the standoff, which contained the planned and actual use of assets.

6c. You asked what impact our experience with the FBI has had on our oversight of the FBI. Our experience with the Bureau has clearly impacted the work that we have done. Because of the difficulty we have encountered in obtaining information in a complete and timely manner even on congressionally requested reviews, we generally have not self-initiated reviews of specific FBI programs and activities. Moreover, in recent years, even congressionally requested work has been limited. In general, the FBI has been more responsive to our efforts when the Committee or Subcommittee requesting the work has FBI financial or oversight responsibilities or where the information we are seeking is for comparative purposes and the primary subject of the review is another law enforcement agency. But, even in those situations, the timeframes for our work are often longer than necessary due to FBI delays in responding to our information requests.

6d. Concerning areas that the Committee should consider for future oversight, the FBI has a wide range of programs, activities, and operations to carry out its mission and responsibilities. Over the past decade, its resources and responsibilities have increased significantly. Therefore, there is a growing need for oversight of programs, activities, and operations that have had little or no external oversight. Future oversight areas could include the implementation, management, and results of specific investigative and investigative-support programs; infrastructure issues, such as the acquisition and implementation of information systems; coordination of FBI efforts with other investigative and intelligence agencies and with prosecutorial agencies; controls over significant items such as confidential informant funds and evidence; and human capital issues, such as training and skills acquisition. We would be happy to discuss potential areas with Committee members or staff at their convenience and in the context of the Committee's agenda and current interests.

7. Comparing the cooperation we have received from the FBI with that received from other law enforcement agencies, as noted in our testimony, our access-to-records problems have been by far the most contentious at the FBI. On occasion, we have encountered access issues at other law enforcement agencies because of the general sensitivity of law enforcement information. However, we have generally been much more successful in obtaining investigative and program-related information from other agencies, such as the Drug Enforcement Administration and Bureau of Alcohol, Tobacco and Firearms, than from the FBI. For example, in a recent review of a DEA headquarters investigative program, we obtained timely access to a sample of completed DEA headquarters investigative files with limited redaction.

Responses of William H. Webster to questions submitted by Senator Leahy

The following is in response to Senator Leahy's letter to me dated June 28, 2001. These answers represent my personal views and not those of the U.S. Department of Justice's Commission for the Review of FBI Security Programs which I chair. As the Commission's review and research continues, my views may change. For your convenience, the questions are also listed below.

1. Senator Danforth testified about an FBI agent who reportedly did not want to act as the FBI liaison for the Waco investigation for fear that doing so would hurt his career, and a second agent, who did agree to act as liaison, who believed that he was retaliated against as a result.

a. Do you have an opinion of how significant a problem it is for FBI employees to be reluctant to report wrongdoing within the FBI because of the fear of retaliation?

In my experience, special agents were willing to and did report serious acts of misconduct by other agents to appropriate internal authorities particularly actions which reflected discredit on the Bureau. There may have been some who feared retaliation but retaliation for properly registered complaints is forbidden policy and practice. It was also the understood policy of DOJ-OPR to monitor careers of FBI secondees for five years to assure no retaliation.

b. Is there currently adequate protection for whistleblowers within the FBI?

During my tenure as Director, whistleblowers were fully protected. In a few circumstances, as in other agencies, substandard employees will seek whistleblower protection to avoid being held accountable for poor performance.

c. What, if anything, would be an appropriate way to strengthen whistleblower protections for FBI agents?

The protections should already there. Periodic reminders in Bureau messages and publications might enhance awareness and confidence that this is indeed Bureau policy.

2. Senator Danforth referred to the unwillingness of some in the FBI to acknowledge their mistakes because of an FBI "culture" that seeks to avoid public embarrassment. What should be done to change this unwillingness to admit mistakes?

"Don't Embarrass the Bureau" is a quote out of a different era. It is human not to advertise mistakes, but the Bureau should emphasize the importance of responding truthfully to official inquiries and the need to cooperate fully to avoid repetition by others ("lessons learned"). Discipline for concealment or lack of candor is appropriate.

3. Mr. Bromwich testified that the FBI has sometimes been resistant to obtaining guidance from groups or agencies outside of itself as shown, for example, in the problems with the FBI laboratory.

a. Do the other members of the panel agree that the FBI needs to be more open to outside influences?

There are areas of specialization that require skills that are outside normal FBI investigative work. Special agents did not sign up to do this work. Getting or bringing in outside expertise is more common today and should be welcomed especially in areas of technology. Outside accreditation is no longer threatening.

The FBI has drawn on CIA personnel to improve its security and analytical capability and FBI special agents have participated in various interagency Committees and joint task forces.

4. One of the specific issues that this Committee may look at is how well the FBI works with its sister law enforcement agencies. The 1997 Inspector General's report on the Ames case concluded that the failure to detect Ames's espionage sooner was partly the result of lack of coordination between the FBI and the CIA. Recently, we have heard allegations that the FBI failed to provide evidence to the Alabama Attorney General that would have enabled him to prosecute two men in the Birmingham church bombing case in 1977. One of these men was convicted only this year and another apparently will not be prosecuted at all because of his mental condition. Do any of you have any view about how well the FBI works with other law enforcement agencies or what it might do to improve in this area?

The unidentified problem which became the "Ames case" was promptly reported to the FBI and one or two special agents were assigned as liaison. The coordination could have been better and I believe has been markedly better since that time.

The FBI maintained a position in the EPIC Center of DEA at El Paso, Texas but did not give open access to its Organized Crime files. These accommodations have to be made to protect sources.

Corruption in some law enforcement agencies is a constant concern. Efforts to improve cooperation and integrity can be found both domestically and internationally. The Bureau's National Academy and numerous Joint Task Forces attest to this effort. The quotation in the courtyard at FBI HQ is significant:

"The key to effective law enforcement is cooperation at all levels and with the support and understanding of the American people."

5. Just three weeks ago, the Ninth Circuit Court of Appeals reversed a district court decision that FBI Special Agent Lon Horiuchi was immune from prosecution on State manslaughter charges arising from his role in the 1992 Ruby Ridge standoff, *Idaho v. Horiuchi*, 2001 WL 604255 (9th Cir. June 5, 2001) (en banc). Four former Attorneys General and a former FBI Director had filed an amicus brief arguing that the decision eventually reached by the Ninth Circuit would "severely undermine, if not cripple, the ability of future Attorneys General to rely on specialized units in moments of crisis such as hostage taking and terrorist acts," and that it

was “impossible to imagine a more chilling circumstance” than the prosecution of Agent Horiuchi. Furthermore, the dissenting Ninth Circuit judges stated that the decision was a “grave disservice” to federal agents, “who knew until now that if they performed their duties within the bounds of reason and without malice that they would be protected from state prosecution by Supremacy Clause immunity and not subjected to endless judicial second-guessing.”

This leaves open a disturbing uncertainty concerning when federal agents may be prosecuted by states for actions taken in the course of their official duties. This issue is obviously very important to the FBI and to federal law enforcement generally. Do you believe that it is important for this Committee to consider legislation that would clarify this difficult area of immunity from State prosecution for actions taken as a Federal agent?

I believe this issue has Constitutional underpinnings. As you know, the present prosecutor in that case recently dismissed it. I was one of those who signed the amicus brief. It might be helpful to clarify and protect from state prosecutions federal agents who are acting in the reasonable belief that their procedures were lawful under U.S. law. I would not however suggest a blanket immunity from civil liability where actions were grossly negligent or involved unreasonable use of deadly force.

6. On June 20, 2001, the day of this Committee’s first FBI hearing, Attorney General Ashcroft issued a memorandum requesting the Strategic Management Council (“SMC”) of the Department of Justice to undertake a comprehensive review of the FBI and to submit recommendations for reform by January 1, 2002. The memorandum also requests the SMC to commission a management study of the FBI by a private firm.

a. Have you had any meetings with members of the SMC to discuss the coordination of your investigations with theirs?

No

b. Have you reached any agreements with the SMC as to how to coordinate your respective reviews with theirs?

No

c. The Attorney General’s memorandum requests that you submit your review to the SMC on or before November 1, 2001. Do you expect to be able to comply with that schedule?

We will do our best but it is more important to have an informed and thorough report than to curtail our efforts prematurely. We understand our charter is not necessarily terminated on November 1, but we will be prepared to advise the SMC of our progress.

7. Has the FBI taken any steps since the arrest and indictment of Mr. Hanssen to tighten internal security or is the agency waiting for you to complete your examination? If any steps have been taken, what are they?

Steps that appear obvious have been taken and we have been kept informed. We have not asked that the FBI wait on us. Our recommendations can be considered even though changes have been made. For example, the periodic polygraphing of some 500 special agents in sensitive positions has already been instituted. We hope to have some judgment on the scope and frequency of this policy.

8. It was reported last week that James Hill, a support employee of the FBI in Las Vegas was arrested for allegedly selling sensitive investigative information to organized crime. Will the scope of your review of internal security measures cover the many field offices of the FBI beyond headquarters here in Washington and the personnel security measures used not just to screen agents but also support staff?

We feel free to examine security measures as applied in the field and for all employees.

9. According to recent press reports, the FBI conducted polygraph examinations of approximately 500 employees in the wake of Robert Hanssen’s arrest. The routine use of polygraphs for screening employees is a controversial issue. Indeed, this Committee held a hearing on that subject on April 25th of this year at which experts expressed a variety of opinions on the reliability of polygraph testing.

a. As part of your review of internal security measures at the FBI are you looking at the usefulness of polygraph tests?

Yes

b. At the time you were FBI Director, did you use polygraphs in screening FBI employees with regard to security issues?

No, but I believe it has deterrence and detection value, the need for which has now been demonstrated. When Director, I took a polygraph examination to access perceptions about its intrusiveness and reliability and consulted with experts. I also took a counterintelligence and life style examination at CIA.

c. Under what circumstances did you as FBI Director use polygraphs to screen FBI agents as an internal security measure?

d. You subsequently became Director of the CIA. Did the CIA have any different policy than the FBI?

CIA utilized periodic vetting examinations. Its problem had to do with backlogging and quality plus some complaints about extended and occasionally heavy handed interviews. These problems can be addressed and I attempted to do so.

e. What are your present views on polygraphs?

The polygraph is still an art form that depends significantly on the skill of the examiner in recognizing inconsistencies and efforts to defeat it. But it is an important tool and needs to be improved.

The FBI has been very skillful in using the polygraph for investigative purposes. It needs to maintain those skills in applying it to more numerous vetting procedures. Absolute reliance is dangerous. There should be other confirmatory information and evidence.

In the area of counterintelligence, I think it can materially reduce the illegal activities of employees who cannot be 100 percent sure they can avoid detection. But it must not be seen as reflecting distrust—it is, rather, one of “trust but verify”. Particularly those to whom our most important secrets are entrusted should fully understand and support its careful use.

10. After the discovery violations in the Oklahoma City bombing case became public, Director Freeh testified before the House Appropriations Subcommittee on Commerce, Justice and State on May 16, 2001. At that hearing, Director Freeh stated that he did not believe there should be an inspector General for the FBI. According to a recent issue of U.S. News & World Report, “Freeh will reverse” himself and support an “independent inspector general as a watchdog over the bureau.” (June 18, 2001 issue, p. 20). As a former FBI Director, what are your thoughts on the creation of such, a position?

There have been problems with statutory inspectors general over the years. There have been important contributions, particularly in the auditing areas of their work. There is some blurring in the separation of powers arena that can cause problems. I prefer vesting as much self-investigative responsibility as possible in the individual agencies. I do not think I favor a separate IG for the FBI. It makes more sense to allow the DOJ to continue; to function under rules established by the AG, to whom the Director reports. However it proceeds, it must be kept out of politics. The Rule of Law is not political.

I hope you find this information useful.

SUBMISSIONS FOR THE RECORD

Memorandum from Hon. John Ashcroft, Attorney General of the United States

ATTORNEY GENERAL MEMO REGARDING FBI REVIEW

Attorney General John Ashcroft today sent the attached memorandum to Deputy Attorney General Larry Thompson regarding a comprehensive review of the Federal Bureau of Investigation.

The Strategic Management Council referred to in the memorandum was created in May by the Attorney General to serve as the formal board within the Department of Justice to provide direction and leadership on long range planning and initiatives. The Council reinforces the linkages among the Department's Strategic Plan, Performance Plan and the budget process. Primary responsibilities of the Council include strategic policy and planning, resource guidance and management, budget planning and decision-making, and performance planning, reporting and accountability. The Council reports to the Attorney General.

The Deputy Attorney General Chairs the Council and the other permanent members include:

- Associate Attorney General
- Assistant Attorney General for Administration
- Director of the Bureau of Prisons
- Director of the Federal Bureau of Investigation
- DEA Administrator
- INS Commissioner
- Chief of Staff to the Attorney General

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D.C. 20530

MEMORANDUM TO THE DEPUTY ATTORNEY GENERAL

COMPREHENSIVE REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION

As you know, the mission of the FBI is to uphold the law through the investigation of violations of federal criminal law; to protect the United States from foreign intelligence and terrorist activities; to provide leadership and law enforcement assistance to federal, state, local, and international agencies; and to perform these responsibilities in a manner that is responsive to the needs of the public and is faithful to the Constitution of the United States. One core value that guides the pursuit of this mission is uncompromising personal and institutional integrity.

In the spirit of enhancing the institutional integrity and performance of the Federal Bureau of Investigation (FBI), request that the Strategic Management Council of the Justice Department (SMC) undertake a comprehensive review of the Bureau, and by January 1, 2002, submit recommendations to me for reforms within the FBI. The members of the SMC—including the Deputy Attorney General, Associate Attorney General, Assistant Attorney General for Administration, Director of the Bureau of Prisons, Director of the FBI, DEA Administrator, INS Commissioner and the Chief of Staff to the Attorney General—should identify and recommend actions dedicated to improving and upgrading the performance of the FBI, assisting the incoming Director with the many challenges to be faced, and reinforcing the FBI's effectiveness as the premier law enforcement organization in the world. In order to assist the SMC in this important task, I have several additional requests.

First, there are several ongoing reviews or investigations of the FBI, including the Webster review of the FBI's internal security procedures and the Department of Justice Inspector General's investigations of both the Hanssen and McVeigh matters. Please ensure that each of these reviews are submitted to the SMC on or before November 1, 2001, so they may inform the Council's recommendations.

Second, I request that the SMC commission a management study of the FBI, by a private firm, to review policies and practices of the Bureau including information technology, personnel, crisis management and performance appraisal. The results of this study should be submitted to the SMC on or before November 1, 2001, so it may inform the Council's recommendations.

Finally, the SMC should independently solicit input from other individuals and organizations, both internal and external, including Congress, who may have constructive ideas on reforming and improving the FBI.

Should you need additional information on these requests, please contact David Ayres, Chief of Staff to the Attorney General. Thank you for your continued leadership.

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, DC 20535
June 20, 2001

Mr. Norm Rabkin
Managing Director
Tax Administration and Justice Team
U. S. General Accounting Office
Washington, DC

Dear Norm:

Thank you for asking us to come over yesterday to discuss your testimony. It was helpful and, hopefully, constructive.

After returning to Headquarters, I consulted with our Deputy Director, Tom Pickard, about the issues we discussed. We would like to take several steps immediately that should make your job easier.

First, Laurie's suggestion to educate our senior management about GAO—how you function, how you safeguard documents, what you need from us, etc.—is an excellent one. Our Executive Conference meets nearly every morning at 8:30. We

would like to have you and your staff make a presentation to us at your convenience.

Second, I mentioned the enormous document production workload we have at Headquarters and how we have facilitated access to Congress in some cases by making the raw documents available here for review by staff. We are prepared to begin that approach immediately, recognizing that there will still be certain types of information we will want to protect, e.g., informant identities. Since GAO maintains office space at FBI Headquarters, implementation of this approach should be uncomplicated.

As an aside, over the last five years, the FBI has reviewed 9.2 million pages of FBI records for release to parties in litigation, to the Inspector General and Special Counsel investigations of the FBI, and to Congress, including the GAO. The unit within the FBI responsible for document review and production has averaged approximately 40 employees throughout this time frame. As we discussed yesterday, this is a tremendous workload and may have been the cause of some delay in your receipt of documents.

In addition, we are inclined to adopt the Department of Justice approach to GAO liaison and facilitate direct interaction between our program managers and the GAO auditors following your initial approach to the FBI for a new audit.

Laurie also raised a valid point about delays in returning phone calls, an issue for which I apologize. We will adopt her suggestion that if I or any other executive is unavailable, someone else will return the phone call the same day.

Finally, we will review and revise our internal policy manuals accordingly but as I said during our meeting, regardless of the precise language, our liaison assumption with every audit is that GAO has the proper authority; that the FBI will cooperate, constrained only by available resources and certain disclosure concerns such as the identity of informants; and that we will provide access to both people and documents consistent with this philosophy. Any decision to the contrary is made based upon larger issues outside the bounds of the liaison function.

Again, Norm, I appreciate the approach of both you and your staff on these issues and look forward to working with you to address your concerns.

Sincerely Yours,

JOHN E. COLLINGWOOD
Assistant Director
Office of Public and
Congressional Affairs

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20575
August 15, 2000

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: CREATION OF A SINGLE DISCIPLINARY SYSTEM FOR ALL EMPLOYEES

On March 5, 1997 (*March 5, 1997, MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE, RE: STANDARDS OF CONDUCT: DISCIPLINARY MATTERS—REVISION OF THE FBI'S DISCIPLINARY PROCESS*), I instituted reforms designed to improve the FBI's disciplinary system, merging the internal investigation and adjudication functions in a reorganized Office of Professional Responsibility (OPR) and creating new procedural protections and an independent appeals mechanism. Many previous concerns about the fairness of our disciplinary system have been corrected by these reforms. The statistical results show that the structural reorganization and process efficiencies have steadily improved OPR's effectiveness. The number of disciplinary inquiries and adjudications pending more than one year has fallen dramatically, from 24 percent at the end of Fiscal Year 1997 to 8 percent at the end of Fiscal Year 1999. Continual improvements have been accomplished in consultation with our employee advisory groups, including the institution of in-person hearings in proposed dismissal cases and increased transparency through annual reports of disciplinary actions. . . . (August 25, 1998, *MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE, RE: ENHANCEMENTS TO THE FBI'S DISCIPLINARY PROCESS*.)

In the Memorandum of March 5, 1997, establishing new disciplinary procedures for the general Bureau population I directed that "Disciplinary procedures in the

FBI's Senior Executive Service (SES). will conform as closely as feasible to these procedures." I have now determined that with the proven success of the revised disciplinary process applicable to non-SES employees, the time has come to revise our SES disciplinary procedures to mirror those for all other employees.

Criminal investigations and administrative inquiries for serious misconduct involving SES members have been subject to the procedural protections enjoyed by non-SES employees since their implementation in March 1997 and are conducted with the same impartiality and thoroughness as are cases involving non executives. However, the adjudication of administrative violations by the two categories of employees have involved different procedures. Allegations of serious misconduct by non SES employees of the FBI are adjudicated by OPR based upon application of a precedent database containing all disciplinary decisions dating back to March 1997. Allegations of serious misconduct by senior executives are now being referred to an SES Board if the Deputy Director determines that the allegations appear to have been substantiated by the OPR inquiry. This Board makes a disciplinary recommendation based upon its appraisal of the facts and precedents, with particular reference to the relatively small number of prior SES disciplinary cases, some of which predate the strengthening of our disciplinary policies. The SES Board Chairperson then determines whether adverse action will be proposed against the senior executive, with the identity of the Deciding Official determined by the level of the SES member under inquiry. The determination of the Deciding Official is final, with no provision for appeal. This difference in adjudication procedures, with different deciding officials applying different precedent bases, permits a perception of a double standard which is neither warranted nor permissible, while at the same time denying SES members the appellate protection enjoyed by other employees.

Certain governmentwide and Department of Justice regulations make it impossible for SES and non-SES cases to be adjudicated identically. By law and regulation, any suspension imposed on an SES member must be for a minimum period of 15 days, so a decision-maker must choose between a letter of censure and a suspension of 15 days without pay for conduct which might result in a three-day suspension for a non-SES employee. Moreover, the final decision on discipline of executives at the level of Assistant Director and above is legally reserved to the Department of Justice. Despite these differences, I have decided that the structures and procedures for processing of SES disciplinary matters should parallel those for non-SES employees, thereby maximizing consistency and removing any perception of a double standard.

Effective immediately, all disciplinary actions, whether for senior executives or non-SES employees, will be governed by the procedures established by my March 5, 1997, and August 25, 1998, memoranda, insofar as not inconsistent with law or regulation. Criminal investigations and administrative inquiries for senior executives will continue to be investigated by OPR, as they are now. Adjudication of administrative inquiries involving senior executives will become the responsibility of OPR, just as it is for non-SES employees and will be based upon uniform application of the precedent cases decided since introduction of the new procedural protections in March 1997. The same standards for evaluating evidence will be consistently applied to all employees, with due regard for the increased responsibilities and obligations of a senior executive. The Deputy Assistant Director of OPR will be charged with proposing disciplinary action against SES members, with the Assistant Director of OPR serving as the Deciding Official, just as is now the case with GS-15 employees. SES members will now have access to the same Disciplinary Review Board (DRB) appeal from an adverse action provided for all other employees, with the Board members chosen in exactly the same manner provided in my March 5, 1997, Memorandum for all other employees.

The decision of a DRB will be final for all employees except those executives for whom disciplinary actions must be decided at the Department of Justice. DRB decisions for those executives will be subject to review and correction by the Attorney General or Deputy Attorney General. To ensure complete equity for all employees and to define the mechanism by which I will implement my ultimate responsibility to oversee the personnel of the FBI, I will reserve a discretionary power to review and correct disciplinary actions concerning all other employees. This power of correction, which may change a disciplinary determination in favor of or to the disadvantage of an employee, is not intended as an additional level of appeal and will not be exercised routinely. It is intended to be exercised on my initiative only in those rare and exceptional cases when I consider it necessary to correct an injustice or to prevent harm to the FBI.

These revisions will help achieve our goal of giving all employees and the American public total confidence that the FBI's disciplinary system fairly and expeditiously identifies and punishes misconduct wherever it occurs within our organiza-

tion and does so without fear or favor. To further this goal, OPR's future annual reports will include information on the number and type of SES disciplinary actions.

Manual changes to follow.

LOUIS J. FREEH
Director

Statement of Hon. Herbert Kohl, a U.S. Senator from the State of Wisconsin

More than five years ago, we began the Ruby Ridge investigation in our Committee. I was honored to serve as the ranking member on that investigation with Senator Arlen Specter. And together in December 1995, the Subcommittee issued a bipartisan, unanimous report containing a number of conclusions and recommendations.

Now, so many years later, it is staggering to discover that the abuses, the mismanagement, and the poor judgment that marred the FBI during those tragic days in Idaho linger to this day. FBI agents who should have been scrutinized seem to have been sheltered. FBI agents who aggressively sought to uncover the truth within the agency believe they have been injured. The investigation process has been tortuous and protracted. Substantive reforms have been slow walked.

The results are clear to see. The recent problems with document production in the McVeigh case were predictable to anyone who read the Ruby Ridge Report but knew that its recommendations had been ignored. The errors in the Hanssen case were almost inevitable at some point in an agency that has a culture of protecting itself from criticism.

The Ruby Ridge investigation we conducted was even-handed and level-headed. We did it not to tear down the FBI but to build it up, to make it better. We suggested numerous procedural and substantive changes to help the FBI. Our goal was not to attack individual agents or to ruin careers. It was to improve the workings of the FBI to prevent future errors. However, today's witnesses and the documents that have been turned over to the Committee show just how entrenched the culture of defiance and sense of infallibility is within the FBI. It must be changed. The FBI must realize that it is not above the law, but rather that it is held to a higher standard.

The vast majority of FBI agents already know this. Now it is up to the new director to see that institutional reforms are undertaken, that public trust in the agency is restored, and that past wrongs are remedied.

Statement of Professor Samuel Walker, Department of Criminal Justice, University of Nebraska at Omaha

EXECUTIVE SUMMARY

** Integrity and accountability in many law enforcement agencies are compromised by the so-called "code of silence" by which officers fail to report misconduct by other employees.

** The code of silence is perpetuated by a lack of rewards and protections for those officers who might come forward to report misconduct.

** Existing whistle blower laws fail to provide adequate incentives and protections for potential whistle blowers.

** The proposal offered in this report involves the creation of a management information system that would document punitive retaliation for whistle blowing.

** The proposal offered here is based on Early Warning (EW) systems that are already in place in many local law enforcement agencies.

** The proposed system significantly shifts the burden of responsibility from individual officers to top management by establishing that protecting whistle blowers is a priority of the organization.

THE PROBLEM

Achieving integrity and accountability in law enforcement agencies is seriously impeded by the existence of a so-called "code of silence" among officers.

Police officers who have knowledge about misconduct by fellow officers often either passively refuse to come forward and report that misconduct or actively lie to investigators about the alleged events.

At the heart of the code of silence is an officer subculture that places a higher value on group solidarity than on integrity and accountability.

An important contributing factor to the code of silence is the absence of rewards and protections for the honest officers who do come forward and report misconduct.

THE EVIDENCE

Evidence of the existence of the code of silence and a failure to reward and protect whistle blowing officers is widespread.

** In his pioneering study of the police subculture, William A. Westley found that officers were willing to lie to protect a fellow officer accused of misconduct.¹

** Herman Goldstein, one of the leading authorities on American policing wrote in 1975 that "There is no more formidable barrier to eliminating corruption than the blue curtain. . . ."²

** The Christopher Commission report on the Los Angeles Police Department (1991) following the 1991 Rodney King beating concluded that "Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers's unwritten code of silence. . . ."³

** The Mollen Commission investigating corruption in the New York City police department concluded that "The pervasiveness of the code of silence is itself alarming."⁴

** The code of silence frustrates the ability of external citizen oversight agencies to investigate citizen complaints about alleged police misconduct.⁵

RETALIATION AGAINST WHISTLE BLOWERS

There is a general consensus among experts that police departments fail to reward and protect the good officers who are willing to report misconduct by fellow officers.

Goldstein concluded that "The honest officer who survives in an organizational atmosphere permeated by corruption is usual very lonely."⁶

Corruption scandals such as the one involving NYPD officer Frank Serpico included apparent life-threatening retaliation.

Forty-one Los Angeles police officers are currently suing the LAPD for punitive retaliation for their having reported misconduct.⁷

INADEQUATE PROTECTIONS FOR LAW ENFORCEMENT WHISTLE BLOWERS

There are no formal programs in existence today to protect law enforcement whistle blowers.

Indeed, little specific attention has been given to remedies for the problem of the code of silence in law enforcement agencies. The problem of the code of silence receives only cursory mention in the leading police management texts.⁸

A Five-year follow-up report on the Christopher Commission found that the LAPD had taken few steps to address the problem of the code of silence.⁹ The code of silence is not mentioned in a massive LAPD report on the Rampart scandal, and there is only one cursory reference to the failure of officers to report misconduct by other officers.¹⁰

¹William A. Westley, *Violence and the Police* (Cambridge, MA: MIT Press, 1970).

²Herman Goldstein, *Police Corruption* (Washington, DC: The Police Foundation, 1975), p. 30.

³Christopher Commission, Report, (Los Angeles, 1991), p. xx.

⁴Mollen Commission, Report (New York, 1994), p. 53.

⁵Samuel Walker, *Police Accountability: The Role of Citizen Oversight* (Belmont, CA: Wadsworth, 2001).

⁶Goldstein, *Police Corruption*, p. 50.

⁷Matt Lait and Scott Glover, "LAPD Sued by Whistle-Blowers," *The Los Angeles Times* (August 25, 2000).

⁸James J. Fyfe, et al., *Police Administration*, 5th Ed. (New York: McGraw-Hill, 1997), pp. 451, 467.

⁹Merrick Bobb, et al., *Five Years Later: A Report to the Los Angeles Police Commission* (Los Angeles: Los Angeles Police Commission, 1996), pp. 46-47.

¹⁰Los Angeles Police Department, Board of Inquiry Report into the Rampart Area Corruption Incident (Los Angeles: LAPD, May 2000).

Katherine Mader, the first Inspector General for the LAPD, initiated a pioneering investigation of the code of silence.¹¹ Ms. Mader, however, resigned in protest in late 1998 over a lack of cooperation from the LAPD and the LA Police Commission. The current status of her initial investigation is not known at this time.

Investigations of police misconduct typically deplore the existence of the code of silence but generally provide no specific suggestions for ways to either break the code or reward whistle blowers.

LEGAL PROTECTIONS FOR WHISTLE BLOWERS

Over the past twenty-five years there has been a growing recognition of the need to provide protection for whistle blowers in both government agencies and private organizations.¹²

As a consequence a variety of whistle blower protection laws exist at the federal level and in all 50 states.¹³

A number of highly publicized cases have created an image of the whistle blower as a hero: the lonely, conscience-stricken individual who takes a courageous stand at great personal and professional sacrifice (e.g., the tobacco industry official portrayed in the film *The Insider*).

The social science literature on whistle blowing and the effect of whistle blower protection laws is not encouraging. The personal costs of whistle blowing are extremely high. There is a deeply-rooted bias against "snitches" in American culture. The individual whistle blower runs a high risk of alienating colleagues, losing friends, and jeopardizing his or her career. It is often very difficult to prove an allegation of organizational misconduct or retaliation for whistle blowing.¹⁴

A PROGRAM FOR PROTECTING LAW ENFORCEMENT WHISTLE BLOWERS

INTRODUCTION

The following proposal outlines a program for identifying retaliation against whistle blowers in law enforcement agencies.

The program is an application of Early Warning (EW) systems, a concept that has emerged in recent years as an important strategy for identifying "problem" police officers. A recent (January 2001) report by the U.S. Justice Department, *Principles for Promoting Police Integrity*, recommended EW systems as a best practice.¹⁵

The major contribution of this proposal is that it substantially shifts the burden of responsibility from the individual to the management of the organization by establishing a formal program to protect whistle blowers and, by doing so, communicating a message that the organization encourages the reporting of misconduct.

EARLY WARNING SYSTEMS

Early Warning (EW) systems are data-based management tools for identifying "problem" police officers and for providing appropriate intervention to correct the performance of such officers.¹⁶

EW systems utilize official performance data such as use of force reports, citizen complaints, involvement in civil litigation, late for duty, or other problematic behavior.

Performance data are systematically collected, entered into a data base, and analyzed for the purpose of identifying those officers who have disproportionate levels of problematic behavior (e.g., significantly more citizen complaints than other officers).

Officers identified by the EW system are then provided counseling or training designed to correct their performance problems.

¹¹Office of the Inspector General, *Six-Month Report* (Los Angeles: Los Angeles Police Commission, January 1997), pp. 41-42, and Appendix J.

¹²Terance D. Miethe, *Whistleblowing at Work* (Boulder: Westview Press, 1999). Alan F. Westin, ed., *Whistle Blowing! Loyalty and Dissent in the Corporation* (New York: McGraw-Hill, 1981).

¹³Elleta Sangrey Callahan and Terry Morehead Dworkin, "The State of State Whistleblower Protection," *American Business Law Journal*, V. 38 (Fall 2000): 99.

¹⁴Miethe, *Whistle Blowing at Work*.

¹⁵U.S. Department of Justice, *Principles for Promoting Police Integrity* (Washington, DC: Department of Justice, January 2001).

¹⁶Samuel Walker, Geoffrey P. Alpert, and Dennis J. Kenney, "Early Warning Systems for Police: Concept, History, Issues," *Police Quarterly*, 3 (June 2000): 132-152. Samuel Walker and Geoffrey P. Alpert, "Police Accountability: Establishing An Early Warning System," *International City Management Association, IQ Service Report*, 32 (August 2000).

IMPACT OF EW SYSTEMS

EW systems have several impacts.¹⁷ The first is on individual officers who are put on notice that their performance is sub-standard and who receive some form of corrective intervention.

The second is on first-line supervisors who are given specific new responsibilities for addressing problematic performance of officers under their command.

The third is on the agency as a whole to the extent that the EW system clearly defines threshold levels of unacceptable performance and communicates to all personnel that unacceptable behavior will receive prompt and specific attention. In this respect, an EW system has the potential for transforming the culture of an organization. Along these lines, a whistle blower-oriented EW system communicates a message to all employees that misconduct will not be tolerated and that the reporting of misconduct is encouraged.

APPLICATION OF EW SYSTEMS TO WHISTLE BLOWING

EW systems may be applied to whistle blowing by, in effect, turning the concept on its head. Instead of identifying "problem" officers it becomes a system for identifying and protecting good officers.¹⁸

The application assumes that an EW system includes a comprehensive set of performance data, including positive indicators. Regular performance evaluations and career path information need to be included in the data base.¹⁹

The concept is applied in the following manner.

** Assume that an officer claims punitive retaliation for having reported some official misconduct.

** The performance data in the EW system data base would help identify any significant changes in that officer's career path that suggest retaliation.

These might include:

- A sudden change in performance evaluations following misconduct reporting incident.
- Reassignment from a preferred position within the agency to one that has low-status.
- Career path stagflation as indicated by a failure to obtain requested assignments in a pattern that deviates significantly from prior career path history.

** The data would also protect against an employee with a poor performance record raising a false claim of retaliation in an effort to legitimate disciplinary action. For example:

- The data base would reveal a history of performance problems prior to the alleged misconduct reporting incident.

ISSUES AND POTENTIAL PROBLEMS

The proposed whistle blower protection program requires considerable investment of organizational resources with respect to data management. Nonetheless, experts on policing argue that an EW system is a wise and necessary investment for the purpose of achieving integrity and accountability. Thus, the whistle blower aspect involves no more investment of resources than is otherwise advisable.

The data in the system would not automatically prove or disprove any claim of retaliation. Nonetheless, in a case of actual retaliation they would provide strong evidence to support the aggrieved officer.

Most important, the program would serve to deter retaliation by communicating a message to employees about the organization's values.

The proposed program is no cure-all. It is simply a management information system that can be used wisely or not at all. The effectiveness of the program depends entirely on a commitment to integrity and accountability on the part of top management.

¹⁷ Walker and Alpert, "Police Accountability: Establishing an Early Warning System," 3-5.

¹⁸ For a related proposal that applies Early Warning systems to the issue of racial profiling, see Samuel Walker, "Searching for the Denominator: Problems with Police Traffic Stop Data and an Early Warning System Solution," *Journal of Research and Policy*, 3 (Spring 2001): 63-95.

¹⁹ A potential problem with implementing the original concept of EW systems is that some-and possibly many- law enforcement agencies do not currently have either an adequate system of performance reports or the necessary technological infrastructure.

CONCLUSION

The so-called code of silence is a major impediment to achieving integrity and accountability in law enforcement agencies.

Effective rewards and protections do not exist for officers who report misconduct.

An Early Warning system-based program can provide performance data that would provide significant protection against retaliation for law enforcement whistle blowers.

Early Warning systems are recommended as a best practice for promoting integrity and accountability and should be adopted independent of any consideration of whistle blowing.

An Early Warning system-based program for protecting whistle blowers represents a proactive stance by a law enforcement organization, sending a clear message that reporting misconduct is encouraged and will be protected.

FBI Director Louis J. Freeh Major Accomplishments, 1993–2001

LAW ENFORCEMENT ETHICS AND FAIRNESS

Core Values: Maintained and re-emphasized five core values for the men and women of the FBI, including: rigorous obedience to the United States Constitution; respect for the dignity of all those we protect; compassion; fairness; and uncompromising personal and institutional integrity.

Bright Lines: In January 1994, set forth “bright lines” that outline standards of professional and personal conduct for all FBI employees. Bright lines were later developed concerning sexual harassment and alcohol abuse.

New Employment/Applicant Guidelines: In 1994, established new guidelines covering all FBI employees and applicants, including stronger penalties for misconduct, new drug-use polygraph examinations for all job applicants, and procedures to prevent bias based on sexual orientation.

LAW ENFORCEMENT ETHICS:

In 1996, established new Office of Law Enforcement Ethics (later renamed the Law Enforcement Ethics Unit) to administer a new interdisciplinary ethics in law enforcement program.

As part of this effort, ethics training for new Special Agents was significantly enhanced. This training was originally a two-hour block at the end of the new Agent training. Since 1996, it has encompassed 16 hours of classroom instruction at the beginning of the 16-week training program. Since 1996, more than 3,300 new Special Agents have received the enhanced ethics training.

To underscore how the awesome powers of law enforcement can be misused, initiated guided tours of the Holocaust Museum in Washington, D.C., in May 2000 for new Special Agents and students of the FBI National Academy.

Since April 1995, trained 1,357 foreign police officers in law enforcement ethics and human rights during an 8-week management course; hundreds more have received specialized training in ethics, public corruption, internal controls, etc.

OFFICE OF PROFESSIONAL RESPONSIBILITY:

In March 1997, established an enhanced, independent Office of Professional Responsibility (OPR) headed by an Assistant Director. OPR investigates allegations of employee misconduct in a fair and timely fashion and provides appropriate sanctions against those who break FBI regulations. OPR also assumed responsibility for FBI ethics training.

In 1998, the FBI began releasing annual reports on disciplinary actions taken by OPR to the news media for nationwide distribution.

FBI LEADERSHIP IN NATIONAL SECURITY

New Resources: With the support of Congress, put in place key new resources and programs to bolster the FBI's ability to counter growing national security threats:

In 1998, under order of the President, created a National Infrastructure Protection Center (NIPC), an interagency center of computer expertise that works to protect the nation's critical electronic infrastructures through high-tech investigations, warnings to public and private entities, and training programs.

In November 1998, opened a new Strategic Information Operations Center (SIOC) at FBI Headquarters. SIOC is a 24/7 operation that provides a centralized, high-tech capability to manage multiple crisis situations.

Established Rapid Deployment Teams in 1998 to enable teams of FBI experts, investigators, medical personnel, and others to respond quickly and effectively to terrorist incidents and special situations in foreign or remote locations.

In 1999, created a new Counterterrorism Division, an inter-agency effort that gathers, coordinates, and shares intelligence information with FBI field offices and government agency representatives. An Investigative Services Division was created at the same time to enhance the FBI's intelligence capacities and to serve as a center for intelligence analysis.

Established a Weapons of Mass Destruction (WMD) Operations Unit to conduct real-time credibility assessments of WMD threats, enabling incidents to be resolved with greater certainty, speed, and safety than ever before.

Opened the National Domestic Preparedness Office (NDPO) in October 1998 to help coordinate federal/state/local response to WMD incidents and threats.

Key Investigations: In concert with the law enforcement community, successfully investigated and resolved major acts of domestic/international terrorism, including:

Bombing of the World Trade Center in New York City in February 1993

Bombing of the Alfred P. Murrah Federal Building in Oklahoma City in April 1995

Serial bombings of Theodore Kaczynski, who was arrested in April 1996

Deadly assault on CIA employees by Mir Aimal Kasi, captured overseas in 1997

Bombing of two U.S. Embassies in East Africa in August 1998

Preventions: Prevented more than 40 potential acts of terrorism from October 1993 to October 1999, including plans to blow up two large propane gas tanks near Sacramento, California, which could have resulted in more than 12,000 deaths.

Economic Espionage Act: Worked diligently with Congress to support the drafting and passage of the Economic Espionage Act of 1996, which makes the state sponsored and commercial theft of trade secrets a federal felony for the first time.

CI-21: Supported the creation of a CI-21 (Counterintelligence for the 21 st Century) board to improve the national counter-intelligence organization and capability of the U.S. Appointed first Counterintelligence Executive in March 2001.

TOOLS AND RESOURCES TO SUPPORT INVESTIGATIONS

Budget: Working with Congress, increased the FBI budget by more than \$1.27 billion to the 2001 Budget Appropriation level of \$3.44 billion.

Strategic Plan: In 1998, developed and published a three-tier Strategic Plan to guide FBI decision-making and resource allocation.

Legal Attaches.

Recognizing Recognizing the need to respond to changes in the global criminal environment brought on by the end of the Cold War, the advent of globalization, and the development of sophisticated communications technology, more than doubled the international presence of the FBI. The number of overseas offices, or Legal Attaches, has increased from 21 in September 1993 to 44 today.

The staffing at Legal Attaches has grown from 107 Special Agents and support staff in October 1993 to 172 total employees today.

Laboratory:

Instituted a series of important changes in the organizational structure of the FBI Laboratory to improve effectiveness and strengthen management of programs, including the appointment of an internationally recognized scientist as an FBI Assistant Director of the Laboratory.

In 1998, achieved the formal accreditation of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board.

DNA innovations:

- Introduced a national DNA indexing system that enables forensic laboratories throughout the country to exchange and compare DNA profiles electronically, thereby linking unsolved crimes to each other and to known sex offenders.
- Became the first laboratory in the nation to implement Mitochondrial DNA (mtDNA) analysis and to use DNA profiles to identify positively a specific individual as the source of a stain.

Worked with Congress in the passage of the Communications Assistance for Law Enforcement Act (CALEA) of 1994, which clarifies and further defines telecommunications carriers' statutory obligation to assist law enforcement in executing electronic surveillance. The FBI's CALEA Implementation Section was transferred to the Laboratory in June 2000.

Developed an automated computer technology system that can make otherwise unidentified links between firearms-related evidence. This system, renamed the National Integrated Ballistic Information Network following its merger with a similar ATF system, assists law enforcement agencies in fighting violent crime.

In 1997, developed mobile, modular laboratories that can be deployed by air, ground, or sea to conduct on-site forensic analyses and examinations in a wide spectrum of environments.

Developed a forensic capability known as the World Forensic Automated Counterterrorism System (World FACTS) that shares information on evidence interterrorist incidents with other forensic laboratories.

Created Evidence Response Teams (ERTs) in FBI field offices. ERTs are well trained, high-equipped personnel that specialize in organizing and conducting major evidence recovery operations and have made major contributions in key investigations, including the Oklahoma City and U.S. Embassy bombings.

In June 2000, established the Indian Country Evidence Task Force composed of Laboratory experts in the field of DNA, firearms, latent prints, and trace evidence. The task force provides dedicated service to Indian Country cases and addresses the need for timely support and training.

Technology, Tools, and Information:

In 1999, instituted the Integrated Automated Fingerprint Identification System (IAFIS). IAFIS replaced the laborious manual system of checking fingerprints with a high-speed, computerized system that accepts fingerprint submissions from law enforcement electronically and responds within hours instead of days.

Unveiled a modernized National Crime Information Center 2000 (NCIC 2000) in 1999. NCIC 2000 is a national computer index of documented crime and criminals that serves the law enforcement community. Today, the new system averages more than 2 million transactions a day, compared to 2 million a year when the original system was established in 1967.

In 1995, established a dedicated Intranet network called LEO for all law enforcement to facilitate communication, information-sharing, and training. Initiated the Technology Assisted Search Program that employs archeological methodology and remote-sensing geophysical equipment to locate forensic evidence buried underground or concealed in buildings or other structures.

Under a provision of the Brady Act, created the National Instant Check System in 1998 to process background checks on prospective firearm purchasers.

Recognizing changing technology and the needs and abilities of FBI Agents, began issuing a laptop computer to each new Special Agent.

Critical Incident Response Group:

In the aftermath of the Branch Davidian Case in Waco, Texas, created a Critical Incident Response Group (CIRG) in 1994 to successfully integrate the tactical and investigative expertise of the FBI into one organization to address terrorist activities, hostage taking, barricaded subjects, and other crisis situations that necessitate immediate law enforcement response.

PROTECTING THE AMERICAN PEOPLE

Violent Crime:

Enhanced the Safe Streets Task Forces concept, which includes teams of federal, state, and local law enforcement officers and prosecutors who work together to combat crimes of violence and gangs. The number of Safe Streets Task Forces has increased from 12 in 1992 to 175 today.

In September 2000, issued "The School Shooter," a report on a two-year behavioral analysis of recent school shooting incidents.

Organized Crime/Drug Trafficking

Achieved major successes against the largest traditional crime groups in the nation, including major take downs of La Cosa Nostra (LCN) Families in New York City, Los Angeles, Philadelphia, Detroit, Miami, and other cities.

Launched Operation Button Down, a five-year initiative designed to provide a long-term, sustained, and coordinated attack against the LCN. The recently ended initiative resulted in the indictment and conviction of more than 1,500 LCN members and associates.

Launched successful investigations to disrupt organized crime groups with ties to Mexico, Europe, Russia and Eastern Europe, Asia, South America, Africa, and the Middle East.

In 2000, established the "Budapest Project," a task force with the Hungarian National Police that targets Russian/Eurasian criminal enterprises. To date, seven individuals have been arrested, including a top ten fugitive of the HNP.

In 1994, established the Southwest Border Project with the DEA to focus investigative resources to disrupt and dismantle activities of significant Mexican drug trafficking organizations operating in the nation's southwest border region.

Established the National Alien Smuggling Initiative to coordinate national law enforcement agencies and the intelligence community to combat international alien smuggling organizations.

Cyber Crime:

Opened the National Infrastructure Protection Center in 1998 to prevent and respond to cyber attacks on critical infrastructures (see page 2 for more info.).

In May 2000, established an Internet Fraud Complaint Center in partnership with the National White Collar Crime Center. The center provides a central repository for complaints and tracks and analyzes trends in cyber crime. To date, it has received nearly 40,000 complaints from victims in more than 100 countries.

Enhanced the FBI's Computer Analysis and Response Team (CART) comprised of computer specialists and a network of trained and equipped forensic examiners assigned to select FBI field divisions. CART performs thousands of examinations of computer evidence each year and provides technical support for the investigation and prosecution of cases involving such evidence.

In cooperation with the U.S. Attorney's Office and federal, state, and local law enforcement agencies, established the Regional Computer Forensics Laboratory (RCFL) in San Diego, California, to acquire, archive, and analyze digital evidence in support of criminal investigations. The RCFL will serve as the prototype for new regional laboratories being established across the nation.

In 1995, established the Innocent Images initiative to target individuals using the Internet to lure minors into illicit sexual relationships and to receive and distribute child pornography. To date, the program has resulted in the arrest and conviction of more 800 individuals.

Health Care Fraud:

Worked with Congress to draft the Health Insurance Portability and Accountability Act of 1996, which provides greatly enhanced funding in the fight against health care fraud, which costs American taxpayers an estimated \$100 billion a year.

Established Health Care Fraud Task Forces in various field offices to coordinate investigations with local, state, and federal agencies.

Launched the largest and most complex health care fraud investigation undertaken by the federal government. In December 2000, the Columbia/Health Care Corporation of America agreed to pay a \$95 million fine for health care fraud, laboratory fraud, overbilling schemes, and kickback violations. It also agreed to pay an additional \$745 million civil settlement.

Crimes Against Children:

In 1995, established the Innocent Images initiative (see page 5).

In 1997, set up a program that designates at least two Special Agents in each FBI Field Office to concentrate solely on crimes against children.

Assigned a Special Agent full-time to the National Center for Missing and Exploited Children.

Developed and published A Parent's Guide to the Internet.

Civil Rights:

In 1997, formed a new Hate Crimes Unit at FBI Headquarters.

Began active participation in the National Church Arson Task Force and national and local Hate Crime Working Groups.

Top Ten Fugitives:

Since 1993, a total of 27 "Top Ten" fugitives have been captured. The latest capture was James Charles Kopp, who was wanted in connection with the shooting death of Dr. Barnett Slepian and was arrested in France on March 29.

IMPROVING RELATIONSHIPS

Domestic Law Enforcement

Strengthened cooperation and liaison with individual agencies and national organizations, including the International Association of Chiefs of Police, the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, the National District Attorneys Association, and the National Association of Attorneys General.

Increased the number of Joint Terrorism Task Forces to 30, significantly enhancing the FBI's ability to work with federal, state, and local partners in fighting domestic and international terrorist attacks.

Work closely with federal, state, and local law enforcement officers and prosecutors in 175 Safe Streets Task Forces (see page 5 for more information).

CIA Partnership:

Significantly strengthened the FBI's partnership with the CIA, making it the most productive in the history of the two agencies.

Includes exchange high-level officials and close cooperation on sensitive national concerns such as counterterrorism and counterespionage.

The new, stronger ties have enabled the two agencies to uncover government spies like Aldrich Ames, Harold Nicholson, Earl Pitts, and Robert Hanssen.

Law Enforcement Training:

Through a variety of training programs, the FBI has developed excellent contacts with domestic and foreign officers and fostered relationships which have greatly increased cooperative investigations across the country and around the world.

Since September 1993, provided a comprehensive 11-week management training course at the FBI National Academy to 8,110 state, local, and foreign police leaders from all 50 states and 118 nations around the world.

Through the FBI Field Police Training program, trained 836,189 local and state police at the field level from October 1993 to October 2000.

In April 1995, opened an International Law Enforcement Academy (ILEA) in Budapest, Hungary, to train foreign police officers from the former Soviet Union and Eastern Europe in policing under the Rule of Law. Since its inception, a total of 1,357 foreign officers have graduated from ILEA's 8-week management course and another 5,015 students have taken various specialty courses.

Since 1994, have trained more than 50,000 foreign police officers from 150 countries around the world.

International Outreach:

Since taking office, the Director has traveled to 68 foreign countries and met with over 2,100 foreign leaders.

The expansion of the Legal Attache program has enhanced partnerships overseas that have proven invaluable in the fight against terrorism, organized crime, cyber crimes, and transnational crimes in the information age.

At the request of foreign governments, assisted numerous investigations in other countries. In 1999, the FBI sent teams of expert criminal investigators and forensic specialists to examine suspected massacre sites in Kosovo. The team presented its evidence to the U.N. International Criminal Tribunal.

Public Outreach:

Created a public Internet home page for the FBI, which is accessed by more than a million visitors each month. The web page has been used not only to inform the public but to generate leads that help capture wanted fugitives.

SUPPORT/CONCERN FOR EMPLOYEES

Overall Hiring: With the support of Congress, hired 5,029 new Special Agents and more than 4,000 technical and professional employees since September 1993.

Reorganization: In October 1993, announced major reorganization to streamline operations at FBI Headquarters and improve efficiency.

Diversity within the FBI:

Made dramatic strides in increasing the representation of minorities and women in the FBI. Since September 1993, the FBI has hired more than 8,000 women and minority Special Agents and support personnel, 56% of the total new hires.

In October 1993, appointed the first woman, first Hispanic, and second African American to serve as an Assistant Director, the second highest rank in the FBI.

Over the course of his tenure, the Director has appointed three African-American men, four Hispanic men, one African-American woman, and one White woman as Assistant Directors.

Developed and implemented the National Special Agent Recruitment Plan to ensure that the FBI effectively recruits and hires qualified applicants from all segments of society.

